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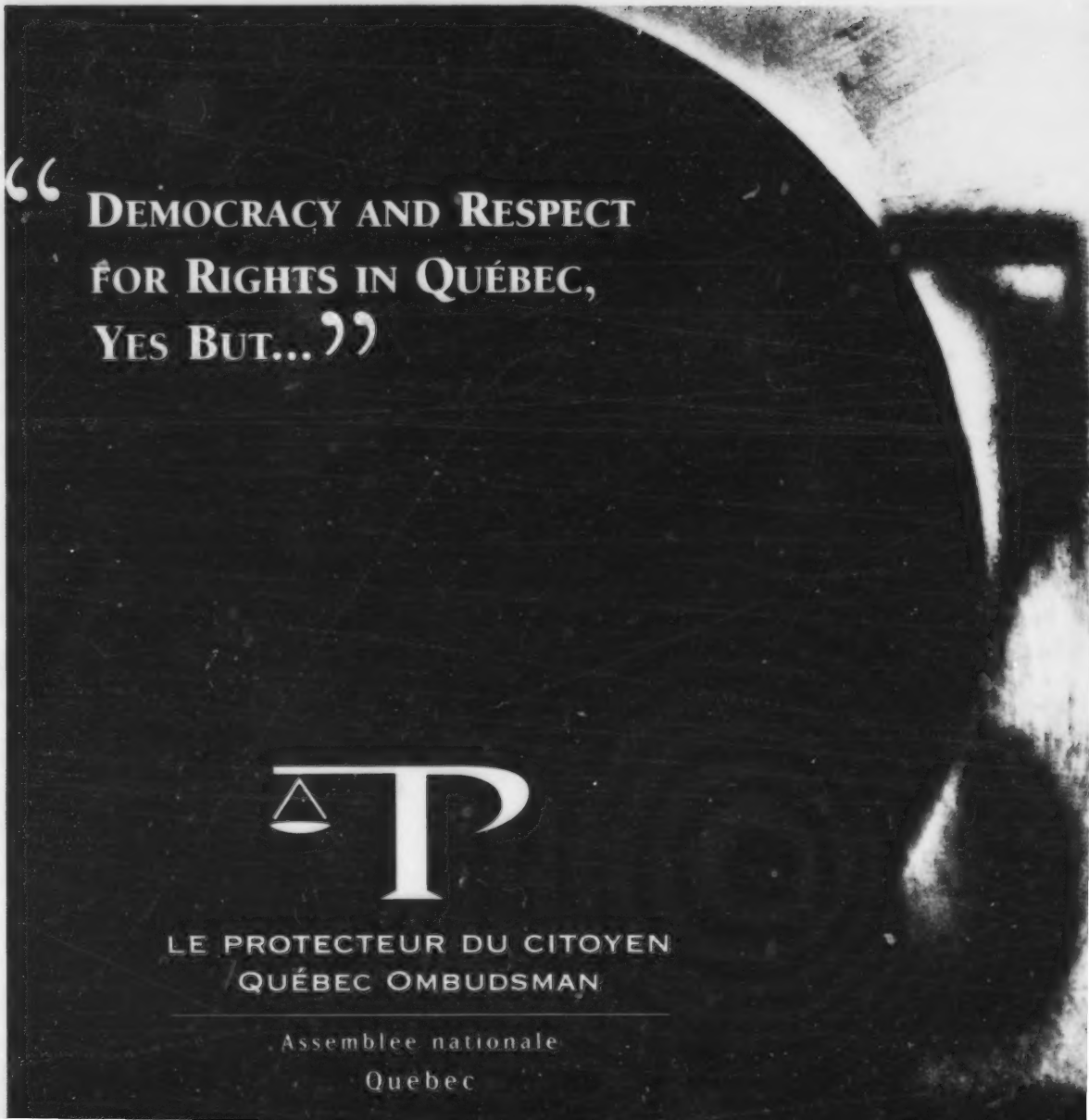

"DEMOCRACY AND RESPECT FOR RIGHTS IN QUÉBEC, YES BUT..."

LE PROTECTEUR DU CITOYEN
QUÉBEC OMBUDSMAN

Assemblee nationale
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Québec City, December 2000

Mr. Jean-Pierre Charbonneau
Speaker of the National Assembly
Hôtel du Parlement
Québec City (Québec) G1A 1A4

Mr. Speaker:

I have the honour of presenting you with the *30th Annual Report of the Québec Ombudsman*, entitled "Democracy and Respect for Rights in Québec, Yes But...", and covering the period of April 1, 1999 to March 31, 2000.

This report summarizes the errors and injustices, which remain too numerous, of the government system with respect to citizens, and the solutions recommended by our institution to improve the quality of service and communication between citizens and government. I hope that the recommendations contained in the 30th annual report serve to inspire the decision and actions taken by the government, and this for the well-being of Québec society.

Yours sincerely,

Daniel Jacoby, Lawyer
Québec Ombudsman

101-06836/

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THE QUÉBEC OMBUDSMAN'S COMMENTS AND REFLECTIONS

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1. THE QUÉBEC OMBUDSMAN'S COMMENTS AND REFLEXIONS

1.1 DEMOCRACY : A GUARANTEE OF THE RESPECT FOR RIGHTS

1.1.1 THE BASIS FOR DEMOCRACY'S EXISTENCE

Respect for rights is best ensured in a democracy because democracy and the rule of law go hand in hand.

Democracy is a political system that is characterized by the presence of institutions that ensure a high degree of rights and freedoms for citizens. Democracy is certainly the most equitable of political systems because it is the only one in which the State not only recognizes ever more highly evolved rights and freedoms, but ensures respect for these rights and freedoms into the bargain. Yet such respect must not merely be validated by political discourse: it must be reflected in administrative practices.

Democracy requires that the State be a State of the rule of law that enshrines rights in constitutional documents and charters that it undertakes to respect; in Québec, the rule of law is thus guaranteed by the Canadian and Québec charters: the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms*. The rule of law equally supposes that international instruments governing human rights are respected.

Furthermore, specific laws organize several of these rights. Thus the fundamental right to privacy, recognized by the Québec *Charter of Human Rights and Freedoms*, is provided for in the *Act respecting Access to documents held by public bodies and the Protection of personal information*, and the *Act respecting the protection of personal information in the private sector*. In the same way, the right to free public education, equally guaranteed by the *Charter*, is defined by the *Education Act*.

Democracy exists for the well-being of citizens, not for the convenience of the Administration. Democracy is a barometer of the legality and the quality of the action taken by the Administration; it must guide MNAs as it does administrators of state and public servants.

For citizens, democracy presupposes public services that are adequate and that fulfill their legitimate and reasonable expectations. Now, what do citizens want if not governmental services that ensure legality, fairness and inclusion, and that are necessarily transparent, so that citizens have the right to know, to understand and to ask for accountability.

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Finally, citizens ask the Administration to use public funds judiciously and as efficiently as possible.

The citizenist view of democracy must enlighten the daily practice of the public services regarding the citizens who avail themselves of these services. Furthermore, when the Administration requires contributions from citizens, it must do so while respecting their rights. Democracy also implies that the public services do not consider rights as mere favours or privileges to be conferred on citizens, because it is the citizens who, exercising their democratic rights, ensure the existence and the perpetuity of the public services.

Thus in democracy, citizens must be able to exercise their rights not only at election time, but each time they have dealings with the public services.

1.1.2 DEMOCRACY AND THE ELECTORAL SYSTEM

But the rule of law also rests on the set of administrative policies and documents used to implement legislation. Such instruments must also comply with the objectives and the requirements of the law.

For thirty years, Québec has adopted sophisticated mechanisms to ensure that fundamental rights are recognized and respected. The most essential of democratic rights is the one that allows all citizens to choose their representatives for the good governance of the State. The strongest and most visible moment of democracy occurs when citizens go the polls to voice their choice. Québec's electoral process is recognized as one of the best in the world. Rules governing revenues and expenditures at election time ensure fair parliamentary representation. The electoral process and its funding are monitored by the Chief Electoral Officer; this institution, independent of the Administration and political parties, comes under the jurisdiction of the National Assembly, which, moreover, cannot interfere in its conduct.

But what happens beyond elections? How is democracy expressed and exercised before and after the representatives are elected? Several mechanisms are then involved.

1.1.3 DEMOCRACY: PARLIAMENT AND GOVERNMENT

First of all, Parliament is responsible for monitoring the action of the executive and specifically, action that is conveyed through the public services. Parliament, which also adopts laws, has the mission of overseeing their application.

The government —which is the source of legislation since it proposes the legislative agenda to the MNAs —must also see that citizens' rights are respected. In this regard, certain government bodies bear a more specific responsibility; such is the case for the departments of justice, public security, and relations with citizens and immigration.

Parliament and the government must ensure that the State's resources are justly and equitably allocated to serving citizens in the most effective manner possible. Citizens are the public services' sole basis for existence; for this reason such services must respect the rights and freedoms of citizens, if not, democracy loses its meaning.

1.1.4 DEMOCRACY AND PROVINCIAL INSTITUTIONS PROMOTING AND PROTECTING RIGHTS

Concurrently with the courts, which contribute in an obvious manner to maintaining the rule of law, the State, in a democracy, is assisted by a set of public bodies promoting and protecting the rights of citizens, such as l'Office de la protection du consommateur, la Commission des droits de la personne et des droits de la jeunesse, l'Office des personnes handicapées du Québec, la Commission d'accès à l'information, etc.

But citizens go further; they have developed private, non-profit organizations whose mission it is to promote public well-being and respect for rights, such as parents' committees, the Fédération étudiante universitaire du Québec, healthcare-user committees, agencies defending the rights of income-security recipients, charity associations and non-governmental agencies that work in all spheres of activity.

Moreover, other, more independant public institutions evaluate the quality of the public services; generally, they are answerable to Parliament: they are the Auditor General and the Québec Ombudsman. The Auditor General ensures the proper use of public funds and the optimization of resources. Like the Québec Ombudsman, the Auditor General is independent of the government. The Québec Ombudsman oversees respect for rights and monitors the quality and effectiveness of services.

The public services do not always fulfill the legitimate expectations of citizens and sometimes contravene the laws. Although democracy is alive in Québec, the Québec Ombudsman, like other public and private institutions, has observed that it experiences failings, systemic dysfunctions and the violation of rights that neutralize the rights and freedoms of many citizens, whether individuals, associations or corporations.

Thus, although democracy is a guarantee of the respect for rights, at the same time, it is responsible for violations that vitiate the establishment of the citizenist view of democracy.

1.2 EVEN IN A DEMOCRACY, RIGHTS ARE VIOLATED

Based on the complaints filed and inquiries conducted on its own initiative, the Québec Ombudsman notes:

1.2.1 THAT THE DIGNITY OF CITIZENS IS ERODED BY REPREHENSIBLE ACTS ON THE PART OF THE ADMINISTRATION

- When school fees required of parents by school boards constantly multiply and increase and a good number of these fees are wrongfully requested. The right of free use is guaranteed by the *Education Act* and the *Charter of Human Rights and Freedoms*.[1]

- When the ministère de l'Éducation unduly withholds sums of financial assistance from students suspected of having made an untruthful declaration, before the Department's investigation is completed, and thus violates the principles of natural justice holding that

1. See chapter 3.1.3, p.47

a citizen cannot be penalized when no grounds for the reproach have been established.[2]

1.2.2 THAT THE RULE OF LAW IS DIRECTLY IMPAIRED

- When the courts recognize that a department has acted illegally and in an abusive manner toward a citizen and that the ministère de la Justice refuses to redress the grave prejudices inflicted. Yet the Department is the primary body responsible for ensuring the rule of law; it must remain above the fray when the government contravenes the laws. The government, on the advice of the ministère de la Justice, whereas the Québec Ombudsman, in addition to the courts, had decided, in three reports, one of which was tabled at the National Assembly, that the ministère de l'Agriculture, des Pêcheries et de l'Alimentation and the ministère de la Justice had acted in an illegal and unreasonable manner.[3]

1.2.3 THAT RIGHTS ARE NOT SAFEGUARDED

- When the ministère du Revenu persists in claiming retroactive dues for tax credits allocated to persons with handicaps, whereas such people could not know and were never informed that their handicap no longer corresponded to the criteria entitling them to the credits. In this affair, the government, through its inaction, has compelled the Québec Ombudsman to call on the National Assembly.[4]

- When administrative unwieldiness linked to the hasty implementation of the universal system for support payment collection is such that even after five years of operation, debtors in good faith are the victims of unjustified wage garnishment and that the creditors unduly await payment of their support.[5]

1.2.4 THAT CITIZENS' RIGHTS AND INTEGRITY ARE NOT TAKEN INTO ACCOUNT

- When health is compromised by excessive budget restrictions imposed on the healthcare network or when the system imposes severe limitations on access to dialysis and kidney dysfunction treatments for citizens residing in remote regions by refusing, without justification, to defray the costs of transportation to major centres equipped with specialized hospitals. This is, however, a matter of treatment necessary to survival.[6]

When the reduction of resources assigned to establishments dispensing care to elderly persons brings about a significant decrease in the services that are due to them. If it is true that the *Act respecting health services and social services* specifiies that services are dispensed according to budgetary availability, it remains that the Québec Ombudsman, having observed the situation of vulnerability in which elderly persons are placed, sharply denounced the lack of control and resources on the part of the ministère de la Santé et des Services sociaux. Furthermore, the Québec Ombudsman considers that the *Charter of Human Rights and Freedoms* takes precedence. In fact, section 48 of the *Charter* states that

2. See chapter 3.1.3, p.57
3. See chapter 2.1.2, p.30
4. See chapter 2.1.1, p.27
5. See chapter 3.1.6, p.76
6. See chapter 3.1.7, p.87

elderly persons must be protected against all forms of exploitation and that they have the right to the protection that must be provided to them by their family or those who act in their stead. On March 16, 2000, the Québec Ombudsman asked the Commission des droits de la personne et des droits de la jeunesse to conduct an inquiry in order to determine whether this reduction of care and services constituted a form of exploitation as defined by the *Charter*.[7]

- When the ministère de la Santé et des Services sociaux cuts budgets to the point of depriving a large number of autistic children, who must wait up to 18 months to get treatment,[8] of adequate care. What becomes of the standard of accessibility to services as provided for in the *Act respecting health services and social services?*

- When the *Act respecting prescription drug insurance*, after three years of application, continues to mean that, income being equal, insurance premiums and coverage of the public plan and private plans are not equivalent, thereby creating grave injustices.[9]

1.2.5 THAT PUBLIC SECURITY, SOCIAL REHABILITATION AND DIGNITY ARE COMPROMISED

- When, for reasons of cost-cutting, the ministère de la Sécurité publique, by closing detention sectors in the prisons, brings about the cohabitation of different types of carceral populations, thereby allowing criminalized groups to recruit new members from among the other inmates, at the risk of increasing the level of criminality of such persons in the process of rehabilitation and increasing substance abuse in society.[10]

- When inmates are forced to make degrading gestures in public while the correctional services staff passively stands by.[11] Such situations not only contravene laws and charters, but also the set of minimal rules regulating the treatment of detainees adopted by the United Nations.

1.2.6 THAT THE GOVERNMENT HAS BREACHED ITS COMMITMENTS

- When Emploi-Québec announced its intention not to respect its agreements with several thousand citizens, specifically depriving them of their training allowance. In this affair, the Québec Ombudsman intervened several times by recommending to and obtaining from the Department that it honour its commitments; moreover, the Québec Ombudsman tabled a special report at the National Assembly on all of the foul-ups and prejudices caused to citizens.[12]

- When the ministère de la Famille et de l'Enfance does not fufill the promise made to citizens to create a universal network of $5-a-day spaces. This year hundreds of families find it impossible to avail themselves of these spaces at reduced cost, because the network is unable to meet the demand that the Department itself created.[13]

7. See chapter 3.1.7, p.86
8. See chapter 3.1.7, p.87
9. See chapter 3.2.5, p.132
10. See chapter 3.1.8, p.91
11. See chapter 3.1.8, p.100
12. See chapter 3.1.9, p.103
13. See chapter 3.1.4, p.62

1.2.7 THAT THE RULE OF LAW IS NOT GUARANTEED

- When the Commission de la santé et de la sécurité du travail refuses to apply a decision rendered by an administrative tribunal that granted, in compliance with the law, income replacement indemnities to a citizen injured in the workplace.[14] Until the Québec Ombudsman intervened, this intransigence deprived a citizen of essential income.

  When the Public Curator, despite its error, persists in refusing heirs a succession that it had administered following the death of a relative, whereas the family had taken the appropriate steps with the agency to determine whether this citizen was known to the Public Curator.[15]

  When the Société de l'assurance automobile du Québec, because of lack of coordination among its services, wrongfully suspends a citizen's driver's licence without her knowledge, resulting in the seizure and the loss of her vehicle for several weeks.[16]

1.2.8 THAT THE PRINCIPLE OF EQUAL OPPORTUNITY IS COMPROMISED

- When income security recipients are penalized by the ministère de la Solidarité sociale when, attempting to improve their standard of living, they pool their limited resources and share their lodgings.[17]

- When the Société d'habitation du Québec, responsible for the Residential Adaptation Assistance Program, demonstrates administrative rigidity by refusing to reimburse the cost of installing a track lift for a person suffering from multiple sclerosis.[18]

1.2.9 THAT THE ABUSE OF POWER CONTINUES TO EXIST

- When the Government of Québec persists in refusing to pay the Duplessis Orphans individual compensation for damages caused, with full knowledge, in a number of establishments, and when the Church, the physicians and the Administration deliberately altered their medical reports, in order to obtain subsidies from the federal government. In other provinces where citizens were subjected to similar prejudices, the authories ultimately agreed to redress the wrongs on an individual basis.

For all these cases of contravened laws and violated agreements or commitments, the Québec Ombudsman has either obtained appropriate redress or engaged in the promotion of the rights involved.

14. See chapter 3.2.1, p.114
15. See chapter 3.2.4, p.126
16. See chapter 3.2.13, p. 165
17. See chapter 3.1.9, p.108
18. See chapter 3.2.12, p.154

1.3 FOR THE DEMOCRATISATION OF THE PUBLIC SERVICES

1.3.1 ORIGIN OF THE RULE OF LAW

This portrait shows that even in a democratic system, the Administration alone cannot ensure respect for rights and laws, and this, despite the existence of independent tribunals, despite the establishment over the years, by this same Administration, of public institutions charged with overseeing the protection of rights; and despite the fact that the Administration is subject to the laws that protect such rights.

The rule of law, the jewel of democracy, imposes upon the Administration, as with any citizen, the duty of complying with the attendant rights and laws. Contravening these laws amounts to acting in an illegal, even abusive manner, to placing oneself above the law, as though the laws were not also adopted for and did not also apply to the Administration.

It must be recalled that for centuries, even millennia, public authorities have believed themselves immune from all reproach, based on the assumption that those who impose the rules of conduct on others are not subject to these same rules. It was the sovereign's prerogative to be above the law. "*I* am the State", said Louis XIV, long before the rule of law had even been formulated as political aspiration.

For centuries, the Administration did not consider itself responsible for its abusive acts, because it had decreed the rules of power's expediency, such as, for example, "The sovereign cannot err." It was with the advent of the rule of law that even the "Prince" was compelled to knock on the door of the simple coalman before entering his cottage.

Democracy is the result of a long process, the purpose of which is to combat and stave off the "arbitrariness of princes"; the people no longer wished to be subjugated to powers that consistently considered citizens to be subjects. Not so long ago the language changed to acknowledge that "citizens" were not merely "subjects" to be "administered." The rule of law is the judicial consequence of the will of the people to refuse to accept that public authorities may behave as though they were above the law. Moreover, the origin of the rule of law is linked to the establishment of the Québec Ombudsman, who at the beginning of the 19th century in Scandinavia, was entrusted with the mission of requesting the "Prince" to redress injustices caused by his "arbitrary" decisions or those of his officials.

1.3.2 IMPORTANT DISTINCTIONS

In a democracy, public authorities do not (with certain exceptions) wish to deliberately violate rights; a good number of injustices are caused by inadvertence, or by error. In many cases, it is not the public servants, who are in direct contact with the citizens, who are responsible for injustices, because wrongs can be caused by a variety of constraints, particularly budget cutbacks that place too heavy a burden on the administrators of government programs.

What can a public servant do, when his workload is suddenly changed or made heavier but yet he is not provided with the tools, the procedures and the training that would allow him to minimize the risk of making mistakes?[19]

Thus the foul-ups and the dysfunctions of the democratic system are also fostered in the name of such praiseworthy goals as the reorganization of public finances.

Moreover, even though the Québec Ombudsman's Annual Report highlights the victims of prejudices caused by the Administration, it is nevertheless true that the Québec Ombudsman has deemed that approximately only 30% of the complaints lodged were founded. Thus, in 70% of cases, the public authorities had rendered acceptable decisions.

1.3.3 THE NECESSITY OF MODERNIZING THE PUBLIC ADMINISTRATION SYSTEM

In order for citizens' rights to be better respected, the quality of the public services must become the central concern of the Administration; the MNAs must have at their disposal the means to assess the progress accomplished. In sum, the Administration must be modernized. And modernizing means, all at once, adapting the managerial framework of the governmental system, updating it, revitalizing it and transforming it in order to refocus the public services on the citizen imperative.

This call for modernization, voiced over the years by MNAs, recently entered a phase of prime importance with the *Loi sur l'administration publique (Public Administration Act)*.

19. See chapter 3.1.9 on the foul-ups of Emploi-Québec, p. 103
20. *Draft Bill no 82 (2000, chapter 8). Public Administration Act*, sanctioned May 30, 2000.

1.4 A PRO-CITIZEN RESULTS-BASED POLICY

Since the Mineau report in 1970, public authorities have viewed the accountability of administrators as a guarantee of the quality of services dispensed to citizens. In 1981-1982, the work of the *Commission spéciale sur la fonction publique* (the Bisaillon Commission) resulted in the definition of the major principles that should guide reform of the public services, the founding of an internal accountability system and the *Public Service Act*, adopted in 1983.

The years have passed, the studies have multiplied and the models as well: goal-based management, total quality and the continuous improvement process, to name but a few. Today, we have results-based management.

Is this a new model? Sceptics tend to think so. A form of results-based management already exists. It follows in the wake of the *Act respecting the accountability of deputy ministers and chief executive officers of public bodies* adopted in 1993, followed by the creation of the Commission sur l'administration publique (Public Administration Commission) in 1997. Furthermore, since 1995, autonomous service units have been established, which constitute, in a way, the first steps toward a new managerial framework for the government system in one law, the *Loi sur l'administration publique (Public Administration Act)*.[20]

Moreover, in its *Annual Report 1997–1998*, the Québec Ombudsman, after having taken legal cognizance of the

administrative justice reform that created specific duties for departments and agencies, asked MNAs to continue in this vein and to adopt a general policy focussed on delivering services to citizens.

Yet is legislating transparency and accountability sufficient to change mentalities that are deeply entrenched in administrative practices and to grant citizens the place they deserve? Can accountability alone guarantee the rule of law and respect, on the part of the Administration, for laws and the rights of citizens?

In my opinion, accountability alone, as a mechanism for rendering accounts, cannot guarantee that the Administration will assume greater responsibility, although it may contribute to such a process.

We must go further. When the Administration renders a decision or takes action, it must provide the result that is expected from the application of a regulation.

In order to do so, it is not enough to apply the regulations; mere respect for a norm or a standard does not guarantee an effective and equitable result.

Results-based management should replace the "cult of the standard" with the "cult of the citizen—result".

Moreover, it is within this perspective that in 1994 I proposed the Social Contract to stave off arbitrariness, and more generally, to improve and further clarify the relationships between the Administration and citizens.

Because, as my experience has shown and as citizens' complaints continue to prove each day, the real effect of a law or a program is rooted in the Administration's powers (guidelines, interpretative guidebooks, practices); for this reason, I wanted the Social Contract to be tangible and applicable to everyday life.

With the bureaucratic process prevailing over the democratic process, I therefore wanted to reveal the "hidden face of the law." I believed that the Social Contract would shed light on this hidden face by giving administrators a tool for discussion, a guide to usage for the conception and the application of administrative standards and procedures. The Social Contract could serve as a guide for administrators.

This Social Contract comprises 56 rules, categorized under 8 headings: transparency, legality and reasonableness, natural justice, planification in citizen service, administration in terms of citizens' expectations, personal dignity and an administration that acts responsibly.

Moreover, the former Premier, Mr. Jacques Parizeau, addressing the Institut d'administration publique, associated the Social Contract with government management: "Recently, the latest Annual Report of the Québec Ombudsman was brought to my attention. It specifically focuses on the rules to be followed to improve the quality of service provided to citizens. I felt that the report contained excellent recommendations which I call on you to follow. In

a time of budget restraint, we must pay particular attention to this aspect of public management so that citizens are not the first to be penalized by cuts in services, or by a deterioration of the services delivered. I am confident that you will be able to harmonize the rationalization of programs with the maintenance of quality of service provided to citizens."

1.5 ENDS AND MEANS

1.5.1 THE NEW TOOLS

The new *Loi sur l'administration publique (Public Administration Act)* provides the governmental system with a managerial framework including tools that should allow us to overcome abstruse and at times, inconsistent administrative activity, and to give MNAs and the public the means to measure administrators' accountability.

The tools inherent to results-based management are:

- the declaration of services provided to citizens : a public commitment to quality of services;
- a strategic plan tabled with the National Assembly;
- an annual expenditure management plan;
- an annual management report.

Such instruments aim to make the Administration act more responsibly. The new law will strengthen the transparency and the quality of administrative practices.

1.5.2 FOR GREATER EFFECTIVENESS: DELIVER THE CITIZEN–RESULT

In September 1999, the Québec Ombudsman formulated his comments on the new managerial framework for the governmental system before a special Parliamentary Committee.

Thus, the Administration must be guided by three imperatives. A citizen imperative: effectiveness; a management imperative: efficiency; a budgetary imperative: economy.

The Administration's decisions must respect the substance and the objective of the law while producing the results that the citizen expects: that is, effectiveness.

Furthermore, the administrator must act by making optimal use of his resources, by avoiding becoming an executant, or equipping the organization with an inadequate computer network or introducing useless processes and formalities: this is efficiency.

Finally, the Administration must operate at the most economical cost, for example by opting for a computer system that meets the needs of those who will use it, rather than unnecessarily advanced technology whose gadgets will never prove useful and that is excessively costly or burdensome: this is economy.

In sum, the Administration must respect the triple E.

But above all, effectiveness must prevail over efficiency and

economy. What purpose is served by managing a public program efficiently at a lower cost, if the citizens ultimately do not adequately receive the services to which they are entitled? Effectiveness must be granted the importance it deserves by aligning the public services with the results that citizens expect.

Yet massive, repeated cuts in recent years have sometimes imposed unrealistic conditions on administrators, conveyed, in popular terms, by the sadly familiar phrase: "Do more with less."

If effectiveness means that the level of service and the quality of decisions must prevail, it is because efficiency and economy alone can result in the distortion of the purpose of legislation.

To attain the law's objectives, the Administration must issue a statement of services delivered to citizens, which determines the level and the quality of the services offered, a public commitment to meeting citizens' expectations, by simplifying the procedures and by making Administration staff accountable.

The strategic plan is the main tool used to measure effectiveness, for it describes administrations' reason for existence, the context, the issues at stake, the orientations, the objectives, the bases for intervention, the public agency's targeted results and performance indicators.

Such a plan should allow the following questions to be answered: do the results for citizens correspond to the objectives of the law? Do the performance indicators allow the results to be measured?

1.6 SOME PITFALLS

1.6.1 MERELY QUANTITATIVE INDICATORS

Results-based management compels the Administration to develop a certain number of quantitative indicators, such as the number of applications processed, and the response and completion time etc.

How many citizens complain about unduly long waiting periods when they request financial assistance, the reimbursement of certain fees, the payment of compensation or the review of a decision? Slow service is often a denial of justice. The appropriate indicators should measure the acceptability and the reasonableness of the time taken by the Administration.

Although it is easier to measure time periods, these should not be the sole indicators used to assess the effectiveness of service.

If the Administration reduces the time it takes to render decisions or deliver a service, this does not mean that the service is adequately provided; such a time indicator may conceal an unreliable piece of information, or an illegal or unreasonable decision. If, to act more quickly, the laws are contravened, the rule of law is compromised and arbitrariness may prevail.

A service of quality cannot be measured merely by the time period in which it is provided. A service of quality must be measured as well by the fairness and justice of decisions and of actions.

1.6.2 THE UNEXPLORABLE CONTINENT

The rendering of accounts by the Administration will be made at the National Assembly, before the Commission de l'administration publique (Public Administration Commission). Based on the reports already produced by the Commission to date, the Commission has heard at the most some 12 departments and agencies. If, henceforth, more than 150 departments and agencies must appear at least once a year before the Commission, one might consider that it will not be able to assume its role: the documents provided by the departments and the agencies may well become an unexplorable continent.

Since each of the documents contains matters that are fundamental to the exercise of public agencies, the Commission staff should be substantially increased so that the National Assembly can fulfill the requirements of the law and regularly explore the entire continent.

It is thus to be feared that this Commission, the last link in the accountability chain, will become a bottleneck. MNAs cannot be further made accountable unless they are afforded adequate tools to fulfill their role.

In this regard, in my last annual report I stressed the importance of the MNAs' contribution in terms of prelegislation and post legislation, that is, throughout the law enactment process. If it is essential that MNAs participate in the exercise of rendering accounts of the Administration and are even the final link, they must ensure that they are capable of effectively accomplishing this task. In sum, the government must take measures so that the MNAs themselves can practise results-based management!

1.7 CONCLUSION

The Québec Ombudsman, who acts as an effectiveness supervisor and monitor, must ensure respect for the laws, thus their effectiveness with respect to citizens.

As effectiveness monitor, the Québec Ombudsman considers that it should assess the Administration in terms of attaining the objectives established by the law, and the mere reading of the "results by indicator" will not be sufficient.

In conclusion, the Québec Ombudsman can only support the government's will to focus the new framework for governmental management on public service quality and on optimal resource use. However, the government must devote itself to delivering the additional resources and the tools needed to ensure that the *Loi sur l'Administration publique (Public Administration Act)* delivers its results . . .

And this, so that the democratic process might prevail over the bureaucratic process.

2

REJECTED RECOMMENDATIONS

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2 REJECTED RECOMMANDATIONS

2.1.1 MINISTER OF REVENUE'S REFUSAL TO CARRY OUT A RECOMMENDATION OF THE QUÉBEC OMBUDSMAN

2.1.1.1 RETROACTIVE ASSESSMENTS ISSUED BY THE MINISTÈRE DU REVENU CONCERNING THE CREDIT FOR PERSONS WITH SEVERE, CHRONIC PHYSICAL DISABILITY

Pursuant to section 27 of the law,[1] the Québec Ombudsman notified the National Assembly in writing of the refusal of the Deputy Minister, then Minister of Revenue, to take satisfactory measures to carry out the recommendation addressed to him on June 18, 1999, and later, of the government's refusal, conveyed through its silence on the notice addressed to it in compliance with this same section on December 15, 1999 and once again on June 22, 2000.

On the occasion of a review program that took place in 1996 and 1997, the ministère du Revenu asked taxpayers entitled to the tax credit for a person with a severe and prolonged physical or mental impairment to provide a new form, the TP-752.0.14 *Medical Certificate*, version 95-12, completed by their physician, in order to validate their eligibility. On the basis of a new medical certificate, the Department considered that certain taxpayers were not meeting the eligibility criteria for the tax credit, and issued them retroactive assessments for the years 1994 to 1996. These taxpayers then approached the Québec Ombudsman, disputing the assessments, since they adequately fulfilled the criteria in force at the time of their initial request for a tax credit, and alleging that they had never been informed in a timely manner of the amendments to the eligibility criteria.

After an inquiry, the Québec Ombudsman recommended to the Minister of Revenue that the retroactive assessments be withdrawn.

In May 1998, the Minister of Revenue withdrew the interest and penalties charged to these taxpayers. The Québec Ombudsman considered this measure to be inadequate, given the circumstances that led the Department to issue the new assessments, and it reiterated its recommendation to the Deputy Minister, then the Minister of Revenue, who decided not to carry it out.

According to the regulations stipulated on line 376 of the TP-1.G guide, which have been the same for several years, a person suffering from a severe physical or mental impairment must produce the TP-752.0.14 *Medical Certificate* with his initial

1. *Public Protector Act*, R.S.Q., c. P-32, *section* 27: "Where, after making a recommendation to the chief executive officer of a public body, the Public Protector is of opinion that no satisfactory measure has been taken within a reasonable time by the chief executive officer to remedy the situation adequately, he may notify the Government in writing and, if he deems it expedient, he may relate the case in a special report or in his annual report to the National Assembly."

application for the tax credit; according to these same regulations, such a person is not obliged to produce another certificate with each subsequent request if his state of health has not improved. For example, a person having made an initial application in 1986 could still benefit from the tax credit until 1997, on the basis of the form initially provided.

Until 1993, the Department, upon the receipt of the medical certificate attesting to the impairment, inserted a permanent impairment code in the taxpayer's tax file. The purpose of this administrative procedure was to prevent the Department from having to request that a new medical certificate be produced, since it already had one in its possession. Later, it sent the taxpayer a notice of assessment which stated:

> In accordance with the information that you have provided, you have been granted the deduction for persons with a physical or mental impairment.

For the subsequent fiscal years, the taxpayer was merely obliged to repeat his request in his income tax return, and the Department automatically granted him the credit with no further formalities. Therefore, since the taxpayer had respected the rules for obtaining the tax credit, he could reasonably expect to receive it in subsequent years.

Acting in this manner, the Department created a normal expectation among these taxpayers. They legitimately took their entitlement to this credit for granted. Based on the information they possessed, the taxpayers continued to presume, rightly, that their request had been studied in detail, and ruled upon, from the outset, based on their eligibility for the credit, which was not the case.

Moreover, the evolution of the *Medical Certificate* form over the years is also a determining factor in the litigation. Indeed, a dozen versions, containing significant differences, were circulated by the Department. For example, the 1991-12 version of the form followed up a major legislative amendment concerning the tax credit. The conditions defining the "basic activities of daily living" which the physician was supposed to take into account in his evaluation, were introduced in the *Taxation Act*.[2] No activity other than those stipulated by the law were supposed to be considered by the physician, whereas formerly, the criteria serving to guide his evaluation of the impairment were established in an administrative manner, merely as a guideline.

Other important amendments were made to the 1993-12 version of the form. The new presentation of the form no longer allowed the physician to make a global diagnosis of the impairment. The Department could henceforth decide the taxpayer's eligibility for the tax credit for itself, based on the responses provided by the physician to each of the questions. Thus the decision on the eligibility for the tax credit had been transferred from the physician to the ministère du Revenu.

Given the legislative amendments and the important changes subsequently made to the form, it should be expected that the persons who fulfilled the eligibility criteria in force at the time of their initial application for the tax credit be incapable of fulfilling the more restrictive criteria stipulated in the more

2. *Taxation Act*, R.S.Q., c. I-3.

recent versions of the form.

Moreover, the Department never notified these taxpayers of the numerous changes made to the eligibility criteria. In this sense, it certainly failed in its duty to provide information as stipulated in the Charter of Rights: Taxpayers and Agents.[3] Since the Department must oversee the proper administration of the tax credit, it has the responsibility to ask the taxpayers concerned to produce a form containing the new eligibility criteria, as soon as the changes come into force.

Legislative amendments, announced by the Minister of Finance in 1991, were the result of a harmonization process with the amendments already announced by the federal government. The decisions to refuse the tax credit for the years 1996 and 1997 were also harmonized with the decisions of Revenue Canada. But it is important to know that Revenue Canada, following the changes made to its form, never assigned retroactive assessments to persons who no longer qualified for the tax credit

In fact, when Revenue Canada noted, within the framework of regular verifications of tax files, that a taxpayer had recently obtained the credit on the basis of an old version of the form, it asked the taxpayer to provide a new form completed by a physician. Then, if it decided that the taxpayer was no longer eligible for the tax credit for a person with an impairment, Revenue Canada simply stopped allowing the credit from that moment on, but it did not issue a new assessment for the previous years.

Furthermore, the Québec Ombudsman's inquiry revealed that the ministère du Revenu du Québec had established specific measures after major amendments were made to the 1993-12 version of the form. In a memorandum dated November 9, 1994, the directeur du règlement des dossiers et des renseignements aux particuliers [director of file settlement and information for individuals] in Québec City explained in detail the way to process applications for credits according to the new form's criteria:

> "The requests for changes to the 1993 assessments to obtain this credit must be processed according to the provisions outlined in the new form TP-752.0.14 (1993). If you must refuse the request for 1993, and you observe that the credit was allowed for previous years, it is not necessary to review the assessment for these previous years, since these assessments were established according to the conditions stipulated in the old form."[4]

Surprisingly, the Department's position, which was reasonable and complied with the principles of equity, was not put into effect within the framework of the program for review of the years 1996 and 1997.

As he explained in his letter dated September 15, 1999, the Minister of Revenue considered that the Department respected the powers and the time deadlines stipulated by the law for the verification of taxpayers' files.

In addition, the Minister mentioned that persons to whom the Department had refused the credit did not qualify for the credit because they did not meet the eligibility conditions determined by the law during the years for which they had applied for it.

3. MINISTÈRE DU REVENU DU QUÉBEC. "Charter of Rights: Taxpayers and Agents," *Declaration of Income forms*, 1997.
4. The Québec Ombudsman's emphasis.

Even though the Department had carried out the review of the files for the period from 1994 to 1996 in compliance with the provisions and the deadlines stipulated by the law, the Québec Ombudsman considers that the notices of retroactive assessment were unfair. Since the contributions had been originally based on the conditions indicated on the old form provided at the time of their original application, since the Department had not notified the affected taxpayers in a timely manner, and since these taxpayers had always respected the guidelines stipulated in the publications of the Department, it was unreasonable to review the assessments. Under such circumstances, the Department should have limited itself to assessing their future eligibility based on the new form.

The Québec Ombudsman therefore advised the National Assembly of the refusal on the part of the Minister of Revenue and the government to comply with his recommendation to redress the injustice of which these taxpayers are victims by withdrawing the retroactive assessments that were addressed to them.

2.1.2 THE JUSTICE MINISTER'S REFUSAL TO CARRY OUT A RECOMMENDATION OF THE QUÉBEC OMBUDSMAN

2.1.2.1 THE DUBREUIL AFFAIR

Pursuant to section 27 of the law,[5] in a special report tabled at the National Assembly last June 13, the Québec Ombudsman informed MNAs of the Minister of Justice's refusal to carry out his recommendation to compensate Mr. Dubreuil for grave prejudices that the Department abusively inflicted on him.

The Québec Ombudsman thus maintained his position despite the opinion of the Québec Justice Minister in the Dubreuil affair.

It will be recalled that Mr. Dubreuil had approached the Québec Ombudsman to denounce the reprehensible action taken by the Minister of Agriculture, Fisheries and Food and the Attorney General in his litigation. The Québec Ombudsman had concluded that the Attorney General had acted in an unreasonable manner and that as a result of an unethical attitude on his part, Mr. Dubreuil was illegally refused the permit, and was subjected to unjustified damages that placed him in the most precarious of financial circumstances.

Contrary to what the Attorney General allowed to be made known, the courts recognized that the Minister of Agriculture, Fisheries and Food had acted illegally by refusing to grant Mr. Dubreuil a permit. Indeed, on June 1, 1993, the Superior Court decided that the Department had not acted within the law, and in December 1995, threw out legal proceedings undertaken by the Attorney General. Furthermore, on September 8, 1998, the Québec Court of Appeals finally decided that the Minister of Agriculture, Fisheries and Food did not have the power to refuse the permit for the reasons it had cited at that time.

5. *The Public Protector Act*, section 27 : "Where, after making a recommendation to the chief exectuive officer of a public body, the Public Protector is of the opinion that no satisfactory measure has been taken within a reasonable length of time by the chief executive officer to remedy the situation adequately, he may notify the Government in writing and, if he deems it expedient, he may relate the case in a special report or in his annual report to the National Assembly."

In addition, the Court of Appeal described one of the legal proceedings launched by the Attorney General a "diversion."

As well, during the legal proceedings, the government had taken steps to convince another individual to purchase the factory that Mr. Dubreuil intended to buy, so as to render Mr. Dubreuil's recourse futile; the government had even granted subsidies to this other person to justify the purchase of this factory.

In addition, according to the Québec Ombudsman, the counsel for the Attorney General shirked their duties as government lawyers. Judge Dussault of the Court of Appeal, while he was Deputy Minister of Justice, had declared: " . . . in order not to commit the error of crushing the fly with the hammer, it is with great prudence that the jurist [of the government] should suggest the use of radical measures . . . the litigant who confronts a citizen in a dispute should always demonstrate good faith and avoid recourse to any dilatory maneuvers; under such conditions, the disproportionate balance of powers compels such a line of conduct."

Yves Ouellette, professor emeritus of the faculty of law at Université de Montréal, also considered that: "the Attorney General's representatives behaved like private sector lawyers, but while benefiting from significant public resources, using the strategies at hand . . . to vigorously defend the interests of a sole client, the government."

Moreover, contrary to what the Attorney General asserted, the Québec Ombudsman was entitled to lead its inquiry, according to a decision handed down by the Supreme Court of Canada. The Québec Ombudsman's position was confirmed as well by the expert Mr. Yves Ouellette.

The Attorney General is mistaken when it considers that the Québec Ombudsman must limit itself to applying the rules of law. As Mr. Ouellette states, the "Québec Ombudsman is not to be held back by political correctness in his role as critic of the Administration. It is not obliged to share this legalistic and traditional view and can promote openness toward change; it can legitimately, within the framework of its reforming and remedial mission, apply pressure so that public counsel who argue against the citizens demonstrate both a sense of the state and impeccable ethics, and exercise independent, professional judgement and fair play, seeking non-contentious solutions that allow public and private interests to be balanced within the framework of the law, and without giving the impression that they aim to exhaust the finances of a dissatisfied citizen."

"The Québec Ombudsman recalled that the Attorney General, no more than a minister, is not authorized to cause citizens to lose their rights by using dilatory maneuvers and by forcing them, without valid motives, to spend their assets in order to counter such maneuvers . . . Even business people do not have the resources to endure such wrongs; citizens, whomever they are, are often the losers when the government decides to contest their rights without serious motives."

The Québec Ombudsman therefore maintains its recommendation to the government that it acknowledge its wrongs and that it assume its responsibilities as a government by compensating Mr. Dubreuil for the severe damages inflicted on him in an abusive manner. The government cannot place itself above the law; it is governed by the rule of law.

3

GOVERNMENT DEPARTMENTS AND AGENCIES ADDRESSED IN THIS REPORT

3.1

DEPARTMENTS

3.1.1

MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION

The ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec influences and supports the Québec bio-food industry from the perspective of sustainable development. The Minister also oversees agricultural insurance and funding programs administered respectively by the Régie des assurances agricoles and the Société de financement agricole.

This year, the Department's rate of substantiated complaints[1] reached a high of 44%. The complaints pertain mainly to the Department's two programs:

- assistance to agri-food businesses (34%), including surety bonds for sheep farms and property tax refunds;
- compensation for damages caused by the ice storm of January 1998.

3.1.1.1 ICE STORM DAMAGES

Following the ice storm of January 1998, the government issued a decree aimed at providing compensation for damages caused to agricultural businesses, specifically to sugarbushes. The decree provided compensation for maple syrup producers for fixed expenditures, in other words the value of two year's worth of annuities, in capital and interest, for a producer's business mortgage loan, in cases where more than 40% of the business had been damaged. The following cases show how well the decree was applied to maple syrup producers.

3.1.1.1.1 THE SUGARBUSH THAT ESCAPED WITH BARELY A SCRATCH

In September 1997, a citizen began to install equipment in the sugarbush he had recently purchased. In January 1998, the ice storm destroyed his forest. According to the established standards, the Department was responsible for evaluating damage caused to trees. It decided, however, to assign the task to forest engineering firms.

In other sugarbushes located near the citizen's own, evaluations showed that over 50% of trees had been severely damaged. In the citizen's case, however, it was determined that damage was done to only 38% of the trees. This result falls below the above-mentioned 40% threshold. As provided for in the guidelines, the Department offered the citizen another evaluation, but at his own expense. Given his already-vulnerable financial situation, the citizen was unable to pay for a second evaluation.

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

During its investigation, the Québec Ombudsman observed that the evaluation had not been supervised by a forest engineer, as provided for in a regulation adopted by virtue of the *Professional Code*.[2] It therefore intervened to have the Department pay for and conduct a second evaluation which showed that 48% of the trees had in fact been damaged. As a result of the Québec Ombudsman's intervention, the maple syrup producer obtained a $34,331 refund for his fixed expenditures.[3]

3.1.1.1.2 WHEN THE LEFT HAND DOESN'T KNOW WHAT THE RIGHT HAND IS DOING

In 1996, a citizen contracted two mortgage loans backed by the Société de financement agricole in order to purchase a sugarbush. One loan was for $117,000 and the other was for $20,000; the Société required that the latter be reimbursed in two years. In 1997, it paid out the first $10,000 and the rest would be paid in 1998. In calculating the citizen's annuity payment, the Department considered that the amount would be repaid over 20 years, even though the citizen argued that the Société de financement obligated her to pay back the loan in two years. Given that the compensation program only granted payment for two annuities, the Department would only pay the citizen $4,000 out of the $10,000 mortgage balance.

In October 1997, the citizen purchased tubing for her operation. Her supplier had consented to defer the payment without interest until the spring of 1998. However, due to the ice storm in 1998, there was no harvest and the maple syrup producer was unable to pay her supplier who then calculated interest owed starting April 1998. Even though these costs were covered by the program, the Department refused to pay, assessing that the citizen was able to pay this amount using the $60,000 first paid out to her as an indemnity in November 1998.

The Québec Ombudsman's investigation revealed that, when the Department made its first payment in November 1998, the Société had insisted that a large portion of this amount be used to pay off the balance of the mortgage, given that its risk as a warrantor had increased due to the sugarbush's devaluation. As a result, the citizen didn't have any money to pay for the tubing, hence the incurred interest.

The Québec Ombudsman deemed it imperative that the Department and the Société clarify the situation. Discussions and meetings resulted in reconciliation between the citizen and the Department, which finally accepted to pay the interest claimed and the entire $20,000 balance on the mortgage.[4]

2. *Professional Code*, R.S.Q., c. C-26.
3. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
4. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
   4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

3.1.2

MINISTÈRE DES AFFAIRES MUNICIPALES ET DE LA MÉTROPOLE

The ministère des Affaires municipales et de la Métropole oversees the proper administration of the municipal system in the interest of the municipalities and their citizens.

3.1.2.1 QUÉBEC OMBUDSMAN'S LIMITED JURISDICTION IN MUNICIPAL MATTERS

Although the Québec Ombudsman can investigate the decisions of the Department, its right to inspection does not extend to decisions taken by municipalities. It monitors, however, the processing of complaints that it refers to the Department's complaints service. This service carries out verifications, formulates notifications, and negotiates with the municipal authorities. The Québec Ombudsman acts in good faith, but the success of its interventions depends more on its power of influence than on its actual jurisdiction.

The Québec Ombudsman reported that once again this year, many citizens have found themselves with no other alternative than that of addressing tribunals to obtain redress. And at what a price! Nevertheless, many citizens are victims of serious prejudices.

3.1.2.1.1 A BULL IN A CHINA SHOP

A municipality built a road on a lot belonging to it, which is adjacent to a citizen's lot. The digging work encroached on the citizen's land by more than one metre, demolishing the fence and its foundation, creating a vertical drop reaching two metres in depth, and uprooting large trees that damaged several others when they fell.

After discussions failed, the citizen launched legal proceedings against the city, but her financial situation forced her to abandon them. She then attempted to negotiate with the municipality; it undertook to fill the land with rather unusual materials, that is, plastic and old tires; and it offered the mere sum of $3,500 as a settlement, not even enough to rebuild the fence, the citizen said.

She then approached the Department, which responded that it could not meddle with the settlement of litigation involving the site of a municipal road, or interfere with the establishment of an amount awarded as damages and interest.

On the contrary, the Québec Ombudsman considered that the Department must be more proactive with respect to this municipality, given the evidence and the extent of the damages

that it caused.[1] While the negotiations have been reactivated between the parties, the Department has agreed to monitor the file and to intervene with the municipality to promote a fair settlement. Preliminary talks are currently in progress.

3.1.2.1.2 INFORMATION WORTH ... $8,000

In 1997, a citizen bought real estate property to which a special tax in the approximate amount of $7,000 had been levied, which was linked to two loans for infrastructure. A city employee informed the citizen that she could settle this amount on the date of her choosing, with no deadline. In 1999, she notified the city official that she wanted to pay the balance. This time she was told that it was impossible for her to make this payment before the due date for the two city loans, that is, before 2005 and 2006. She approached the Department, which concluded that the city had mistakenly applied this practice until January 1, 1999. As of this date, the city would comply with legislation. Since the citizen was able to pay this invoice as of 1997, this mistaken information caused her additional expenses of approximately $8,000 in interest.

The Québec Ombudsman questioned some of the data recorded in the letters that the city had addressed to the citizen. Although he could not intervene with this city, he gathered information from the municipal administration official: the official realized that a mistake had been made. A few days later, he wrote to inform the citizen that she could pay a part of this special tax as of 2001, rather than in 2006, which would spare her approximately $2,000, that is, the interest payable for this period.

But this merely constituted partial redress for the prejudice borne. The Québec Ombudsman plans to press the Department to intervene with the city to secure adequate redress. It will cite that as a result of his instructions, which contravened the law, the municipal administration official provided erroneous information, which engaged the city's responsibility for the damages caused.[2]

This ruling was established by the Supreme Court[3] a decade ago, and has since been cited many times by the Court of Appeal and the Québec Superior Court. The court based its decision on the error committed in application of the law by a municipal official acting within the framework of his duties. The court added that a simple mistake can engage the responsibility of a municipality, contrary to the exercise of discretionary power, for which a decision attributing responsibility must be predicated on a serious error.

The court thus softened the timeless admonishment: "ignorance of the law excuses no man," asserting instead that the citizen is justified in trusting the competence and the information provided by a municipal administration official.

1. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
   3.2 Promote respect for basic rights and freedoms in each action that is taken.
   3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.
2. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
   3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
3. *Maska Auto Spring c. Ste-Rosalie (Village)*, [1991] 2 *R.C.S.* 3.

3.1.3

MINISTÈRE DE L'ÉDUCATION

"The *Act respecting the ministère de l'Éducation*[1] confers responsibility upon the Minister of Education for "promoting education; by promotion, development and support in those fields, to raising the level of scientific, cultural and professional achievement for the population of Québec and its individual members; favouring access to the higher forms of learning and culture for any person who wishes to have access thereto and has the necessary ability; contributing to the harmonization of the orientations and activities of his department with general government policy and with economic, cultural and social needs." [2]

Over the course of the last fiscal year, the number of complaints addressed to the Québec Ombudsman dropped from 443 in 1998–1999 to 352 for 1999–2000. This decrease of 21% is attributed to the reduction in complaints concerning student financial assistance.

3.1.3.1 TYPE OF COMPLAINTS SUBMITTED BY CITIZENS

The overall picture of complaints concerning pre-school, primary and secondary education attests more to recurrent dysfunction in school organization, such as:

- access to special education services;
- problems relating to admission;
- expulsion or transfer of students from or among schools;
- access to and safety in school transportation;
- problems with the evaluation of achievement (sec 231EA), course equivalence and certification of studies;
- the rates for services offered by schools.

A strong majority of complaints filed are related to the organization of school services.

The complaints concerning college level education also involve the organization of services, and call into question the decisions taken by college administrations. The complaints are categorized by topic, such as the recognition of course equivalents, accreditation of learning, admission to and expulsion from programs of study and various fees charged to students.

The Québec Ombudsman again received a number of complaints pertaining to success incentives and the "failure tax." Parents contest the very principle, and students question the legality and the legitimacy of these administrative practices.

A substantial proportion of the complaints (65%) involving

1. *Act respecting the ministère de l'Éducation*, R.S.Q., c. M-15.
2. MINISTÈRE DE L'ÉDUCATION. *Mission*, [www.meq.gouv.qc.ca], 2000.

universities pertains to the application of the ministerial policy on tuition fees required of non resident students, a policy administered by the universities. Students contest inflexible regulations that do not take particular circumstances into account, with respect to both the criteria and the means chosen for establishing the eligibility for Québec resident status. In addition, they point to the discriminatory and oppressive nature of certain practices, particularly with respect to immigrants not selected by Québec and students with dual citizenship.

3.1.3.2 EDUCATION NETWORKS

Upon analyzing the processed complaints, the Québec Ombudsman notes that the reform of the education network, underway since 1996, has not allowed parents to adequately participate in school management. Although the structures of school boards have undergone significant changes, the culture of the setting has not changed, since there is still no recognition of parents' right to participate in the decisions that concern their children, that is, the right to be consulted before a decision is taken, the right to receive complete information about the criteria selected to take the decision, the right to obtain relevant, timely information for preparing the review of the decision rendered by the school authority, as well as the right to carry out this review within a framework that respects the rules of natural justice.

3.1.3.2.1 TRANSFER OF STUDENTS FROM ONE SCHOOL TO ANOTHER: A DECISION WITH SIGNIFICANT CONSEQUENCES

The Québec Ombudsman addressed the ministère de l'Éducation to transmit the complaints of several parents concerning the ways in which school and school board administrations take action when their children are transferred to another school.

He requested that the Department intervene among school boards so that their administrative policies, as well as those of the schools, comply more fully with the spirit and the letter of the *Education Act*[3] and foster egalitarian relations among parents, the school and the school board. Without calling into question the need for establishing regulations governing admission and transfer to another school, these parents wish to know the standards to better understand the decision; they refuse to be presented with a *fait accompli* after a decision has been rendered without their knowledge.[4]

Moreover, the Québec Ombudsman stressed that it was difficult, if not impossible for parents to exercise their right to review a decision before the Council of commissioners, particularly when the school's decision is communicated to parents at the end of the school year or during the summer vacation period. Indeed, it is difficult for them to obtain the information they require to prepare their challenge to the school board ruling within a reasonable period of time before hearings.

3. *Education Act*, R.S.Q., c. I-13.3.
4. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
   4. ***Respecting the Rules of Natural Justice***
      4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

3.1.3.2.1.1 WILL LITTLE PAUL BE CHANGING SCHOOLS?

On June 22, parents were informed that their son would be transferred to another school for the following school year without being given any reasons or the criteria for the decision.

On July 14, the parents formulated a request to review the decision with the school board, as provided in the *Education Act*. On July 16, they asked the school board to provide them with a copy of the policy on registration criteria and the distribution rules for assigning students to schools. On July 23, July 30, August 16 and August 17, they repeated their request.

This request remained unanswered until August 17, when the school board informed them that the hearing before a committee of commissioners would be held on August 19. On August 18, the parents finally received a copy of the policy on registration criteria as well as the opinions formulated by the parents' committee and the union. On August 20, the parents asked to be informed of the terms of the recommendation of the examination committee that was presented to the Council of commissioners. This request remained unanswered. On August 25, the council upheld the student's transfer without providing any justification. On August 26, that is, the day before school commenced, the parents received a copy of the decision.[5] On August 27, they requested an interlocutory injunction and obtained a temporary injunction to keep their son in his school. The hearing was set for November 3. Furthermore, the exchange between the parents and the lawyer acting for the school board allowed them to conclude that the school board wished to submit its school admissions policy to tribunals for study to validate its compliance with the rule of law. The parents then addressed the Québec Ombudsman.

The Québec Ombudsman asked the Department's regional administration office to intervene with the school board so that it reconsider its position; it held that the analysis of the facts revealed that the school board had contravened the provisions of the *Education Act* and had not complied with the rules of procedural fairness because the parents had not had timely access to relevant information to prepare their challenge to the ruling.[6] Moreover, the school board showed indifference to the interests of the child, for whom this transfer might prove damaging. The school board finally amended its decision and allowed the child to finish his year at his school.

3.1.3.3 SCHOOL TRANSPORTATION SAFETY

School transportation safety continues to be a matter of concern to several parents who called on the Québec Ombudsman following decisions taken by school boards to refuse transportation to their children because they didn't meet the standard stipulated by the school transportation policy. These parents were therefore forced to address the

5. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
      1.2 Give citizens all the information they need in a timely manner.
   8. ***Doing the Utmost to Act Responsibly***
      8.6 Provide services and information, and convey decisions, within a reasonable length of time.
6. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.1 Abide by special statutes and regulations as well as regular legislation.

Council of commissioners to challenge the decision. They claimed that their children had to take a dangerous route to go to school. They demanded that the policy be amended to provide children who must walk through dangerous areas with access to school transportation. The school boards refused to recognize dangerous routes as an eligibility criterion for school transportation.[7] They asked the parents to address the municipality or the city in order to remedy the situation. For its part, the Department refused to intervene among school boards on the grounds that the organization of school transportation comes under their jurisdiction.[8]

These complaints highlight two significant problems.

Parents have no real recourse to contest a school board decision, because the Council of commissioners is the authority that adopts school transportation policy. Moreover, no one wants to take responsibility for children's safety in zones at risk. The Department refuses to acknowledge responsibility in such a role and hands over the responsibility for the safety of children to the school boards. The school boards hold the municipal authorities responsible, who refuse to accept the responsibilities that they deem to belong to the education network. Citizens bear the burden.

7. **The Social Contract**
   5. *Serving Citizen*
   5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
8. **The Social Contract**
   8. *Doing the Utmost to Act Responsibly*
   8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.
9. LE PROTECTEUR DU CITOYEN. *Les enfants d'abord : rapport sur la sécurité du transport scolaire*, 1995.
10. Section 39: "Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing."

3.1.3.3.1 THE QUÉBEC OMBUDSMAN CHALLENGES THE MINISTÈRE DE L'ÉDUCATION ON SCHOOL TRANSPORTATION SAFETY

The Québec Ombudsman reminded the Minister of Education of the government's commitment to drawing up an assessment of the overall school transportation situation following the merger of school board territories. It asked the Minister to require that the school boards formulate a specific policy on school transportation safety, and that this policy identify safety measures for the territory and prioritize safety in the development of transportation organization policies.

Recalling the recommendations that it formulated in its report on school bus safety,[9] the Québec Ombudsman asked the government to set minimum safety standards that go beyond those governing motor vehicles and driver qualifications, in order to adequately fulfill the obligations required of the government in section 39[10] of the *Charter of Human Rights and Freedoms* regarding children throughout the territory.

In response, the Minister informed the Québec Ombudsman that he was entrusting a private-sector expert with the mandate to develop a school transportation policy in order to ensure that Québec students have entirely safe access to school and that agencies and teaching establishments apply this right equitably.

After examining the mandate accorded by the Minister, the Québec Ombudsman stressed that it did not give safety the

essential and significant place that it should have, being primarily concerned with the financing of school transportation. Beyond the distance standard for access to school transportation, safety should be a priority criterion. The Québec Ombudsman once again called on the Minister to require that every school board adopt an access policy that takes safety as a priority into account.

3.1.3.4 SPECIAL EDUCATION: WHEN ACCESS TO SERVICES RESEMBLES A BATTLE

Complaints have been made to the Québec Ombudsman by parents battling school administrations to obtain services that will allow their children with disabilities to be integrated in the school setting. The complaints reveal the inadequacy of resources available to the schools, which forces them to choose which students will receive the services.[11] A number of school administrations fail to understand the requirements involved in the integration of children with disabilities.

The Québec Ombudsman received one complaint, among others, from the mother of a disabled student for whom a plan of individualized services had been defined without the mother's participation and which, furthermore, was not respected by the school staff. The school staff's attitude and the fact that he did not receive the required assistance made the child think that he was disturbing others at school. Having reminded the Department that the *Education Act* requires the school to establish a plan of individualized services for each child with disabilities, and that the parents and the student must participate in formulating this plan, the Québec Ombudsman asked the Department to ensure the rights of all parties be respected.[12]

Following this intervention, a meeting was held with the school staff, the school board, the CLSC, the physical rehabilitation centre and the student's mother to discuss the measures to foster the child's harmonious integration at school. A twelve-point plan to correct the problems was adopted and a follow-up was planned. The child now receives the services he requires in order to carry on with his schooling and participate in school activities.

Thus the school staff was informed of the student's medical condition and the care necessitated by his physical condition. Physical arrangements were made in the classroom, the washroom and the school yard.

3.1.3.5 SCHOOL FEES REQUIRED OF PARENTS: LEGISLATIVE AMENDMENT IS ESSENTIAL

For several years, the Québec Ombudsman has received complaints from parents indicating that an education free of charge has been called into question by the imposition of numerous fees.

The Québec Ombudsman has noted the multiple fees and

11. **The Social Contract**
    5. *Serving Citizen*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
    5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

12. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.2 Promote respect for basic rights and freedoms in each action that is taken.
    4. *Respecting the Rules of Natural Justice*
    4.5 Avoid all forms of discrimination or unequal treatment.

growing cost increases required of parents. Among these costs, several, although illegal, are tolerated by the ministère de l'Éducation. Such fees include the purchase of dictionaries, grammar books, novels for required reading, bibles, calculators and fees for repeating exams.[13]

If, taken separately, other types of fees required of parents may be considered legal, reasonable or affordable, the cumulative effect of so many different fees compromise the right to a free education[14] guaranteed by the *Education Act*. The Québec Ombudsman also noted that more and more charity agencies must assist parents who are unable to pay for all school fees.

In January 2000, the ministère de l'Éducation published the report « Frais exigés des parents» ["Fees required of parents"] which underscores the illegal and unreasonable nature of a number of administrative practices regarding required fees and the need to broaden the discussion. It announced aid totalling $15 million for the year 1999–2000, and provided school boards with the guide « Frais exigés des parents : quelques balises » ["Fees required of parents: Some guidelines"] to assist them in correctly interpreting the law. In addition, it announced potential amendments to budgetary rules to allow for the free use of several types of supplies.

The Québec Ombudsman informed the ministère de l'Éducation that although these measures are a step in the right direction, they are still inadequate. It also urged the Minister to correct the situation of illegality by taking the measures required to reimburse parents who have paid fees illegally imposed since 1992.

The Québec Ombudsman also recommends amending the *Education Act* in order to include guidelines on the right of free use, particularly school textbooks, teaching materials and educational outings required for the teaching of programs. It stressed to the Minister that although budgetary rules are useful and necessary, they are to be used for daily administrative management and cannot, as a statement of principles for administrative management, replace the law.

It also held that the use on the part of all schools of workbooks and photocopies as complementary materials to school textbooks shows that they are necessary and required to attain program objectives and that in this regard they should therefore be free of cost. Not to acknowledge the obligatory nature of workbooks and photocopies is inconsistent with reality and the new criteria for defining free-use school textbooks and teaching materials.

Furthermore, it pointed out to the Minister that excluding free-of-cost workbooks and photocopied documents will not enable him to meet the objective of reducing the fees required of parents while respecting the right of free-use principle. Indeed, according to the latest study carried out by the Fédération des comités de parents, "the cost of workbooks accounts for approximately 75% of expenses for teaching purposes at the primary level and 55% at the secondary level."[15]

13. **The Social Contract**
3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
3.1 Abide by special statutes and regulations as well as regular legislation.
14. **The Social Contract**
3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
15. FÉDÉRATION DES COMITÉS DE PARENTS DE LA PROVINCE DE QUÉBEC. *La gratuité scolaire au primaire et au secondaire dans les écoles publiques* : rapport d'étude, Québec, 1997, p.12.

The Québec Ombudsman therefore requested that the restriction on the right of free use stipulated in section 7 of the *Education Act* according to which documents in which students write, draw or cut must be purchased, be limited to materials that are used daily (pencils, paper and other material of a like nature), not specialized and inexpensive, whose purchase is optional, and particularly, that the restriction not be applied to workbooks and photocopies.

Moreover, the Québec Ombudsman held that compulsory outings of a pedagogical nature should also be free of cost. Such activities allow students to attain a number of the program learning objectives and fulfill the same essential criteria as textbooks and teaching materials.

If this were not the case, the participation of students would be left to the discretion of parents.

Finally, the Québec Ombudsman asked the Minister to set a limit on the fees required of parents and to amend the *Education Act* accordingly. This legislative amendment should be accompanied by a control mechanism among schools and school boards, such as a fees registry.

The *Education Act* should, moreover, be amended in order to forbid schools from making profits from the fees charged to parents. Indeed, this practice does not comply with the law or the social nature inherent in free access to quality education. The Department should put forward guidelines on the presentation of invoices sent to parents so that they are detailed and reflect the requirements for transparency inherent to public administration. The Québec Ombudsman awaits the Minister's response.

3.1.3.6 REGULATIONS ON QUÉBEC RESIDENT STATUS

The Québec Ombudsman raised this problem in its last annual report; at that time it announced that discussion should be pursued with the Department on new amendments to the various regulations that define Quebec residency.

Reminder: pursuant to the policy on adjusting fees for students who are not Québec residents, the Department proposed, in May 1998, draft regulations defining resident status for the three levels of education. The Québec Ombudsman submitted comments to the Department, which then formed a ministerial committee to study these proposals. On July 9, 1999, the Deputy Minister reported on the committee's work and his intention to propose amendments to the regulations involved to the Conseil des ministres. Without calling into question the policy and the substance of the chosen eligibility criteria for resident status, the Department planned to clarify its position on the right of residency granted to holders of Québec Selection Certificates and consequently, to standardize the rules governing financial assistance. It also allowed another category of students to retain their residency status despite temporary absence from Québec, if they demonstrated that they resided in Québec for three years during the course of the last five. On September 15, 1999, the Department presented, as it had announced in the letter of

July 9, 1999 addressed to the Québec Ombudsman, the new draft regulations.

On October 28, 1999, following the publication of these draft regulations, the Québec Ombudsman deplored the fact that the Department still did not recognize the same right for immigrants of long standing and Canadian students born outside Québec and who were in Québec at the time of the coming into force of the regulations as that recognized for students born in the province. It reiterated its request to restrict the link of dependancy between the adult student and a third party (spouse or parents) to persons who are truly dependant. He also asked for the easing of eligibility rules with respect to persons who must temporarily leave Québec, particularly for reasons of temporary study-term or work-term visits.

On December 22, 1999, the Deputy Minister of Education informed the Québec Ombudsman that further amendments would be made to the draft regulations, specifically to allow persons who have obtained Québec resident status to leave Québec for a period of two years without losing the status. The Department also announced that the inter-level rules and financial assistance would be harmonized.

3.1.3.6.1 APPLICATION OF POLICY ON ADJUSTED FEES: FLEXIBILITY AND DISCERNMENT

The Québec Ombudsman noted the unwieldy application of the policy for immigrants who hold a Québec Selection Certificate issued for a family and for persons born in adjacent territory.

Complaints made by university students allege that the policy on tuition fees should have been applied with flexibility and discernment. Although in the end they could have secured recognition of Québec resident status, each was refused permanent resident status in Québec. What is more, they had to pay the adjusted fees over several academic sessions and were subjected to futile administrative procedures.

3.1.3.6.1.1 A QUEBECER BORN IN AN ONTARIO HOSPITAL

One university did not recognize one such student as a person born in Québec because, by virtue of the Department's guidelines, he could not provide a civil or religious birth certificate attesting to his birth in Québec as required by ministerial policy. The student was therefore treated as a Canadian residing outside Québec, and had to pay additional tuition fees.

The said person was born in the Ottawa General Hospital to parents residing in Québec. The parents declared his birth on a form submitted by the hospital and indicated their Québec address. The registration of the birth, however, was filed with the Ontario Officer of the Registrar for Vital Statistics. The parents had never been informed of the existence of a special form attesting to recognizing Québec as the official place of birth. They acted as many residents of adjacent territories and presumed that the child's place

of birth was Québec.

The Québec Ombudsman submitted that the place of birth recorded on the form, an official document attesting to a birth in Québec, was in Québec, and that this family had never resided in Ontario. The birth had occurred at the Ottawa hospital because the Québec physician practised there. What is more, the child was always covered by the Québec health insurance plan and his mother received family benefits as a result.[16]

The ministère de l'Éducation accepted the Québec Ombudsman's recommendation, granting the status of permanent Québec resident and reimbursing the student for all the costs incurred, including interest. As well, the Québec Ombudsman secured that a guideline be sent to all university registrar offices so that other students in the same situation can have their status reviewed. The Department must also specify its policy on tuition fees in order to prevent such situations from arising during registration in a teaching establishment.

16. **The Social Contract**
    5. *Serving Citizen*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
    7. *Respecting Personal Dignity*
    7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.
17. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
    5. *Serving Citizen*
    5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

3.1.3.6.1.2 ALL ON THE SAME CERTIFICATE...

The situation experienced by this student is different and may occur less frequently. Under the new policy on tuition fees, his university refused him the status of Québec resident because he could not provide an individual Québec Selection Certificate, a supposedly mandatory requirement of the Department's administrative policy. Indeed, on his arrival in Canada with his parents, only one certificate was issued in the father's name. The student's name was, moreover, recorded on Immigration Canada's official record of his father, and this attested to the selection of all family members by Québec in 1981.

The student could therefore provide this sole document to attest to his selection and there was no possibility to undertake additional administrative steps to obtain a certificate. The issuing of individual certificates by the ministère des Relations avec les citoyens et de l'Immigration du Québec began in January 1985. Prior to this date, the Department issued a single certificate for all the members of the same family.

In the wake of the preceding case, the Québec Ombudsman secured the review of this student's status and the reimbursement, with interest of the expenses incurred for the academic year 1997–1998. An administrative guideline was also sent to all university registrar offices to inform them of the special conditions applicable to issuing certificates prior to 1986, and to the eligibility of candidates presenting a reference on the official record of Immigration Canada.[17]

3.1.3.7 INDEPENDENT EMPLOYEES OF THE DEPARTMENT

The Québec Ombudsman received several complaints from professional revisers hired by the ministère de l'Éducation. The Department considered them to be independent workers, and the revisers therefore claimed the tax deductions pertaining to this status. Following verifications, Revenue Canada determined that they were salaried employees, and demanded the reimbursement of deductions claimed for the period from 1996 to 1999. Furious at having to assume the financial consequences of bad management policy on the part of the Department, they addressed the Department, which stuck by its decision.

The Québec Ombudsman's investigation revealed that the revisers had been misled by the Department; it had not carried out the relevant verifications on the status of the personnel that it was hiring.[18] The Department then rallied to the arguments of the Québec Ombudsman and reimbursed the amounts required by the revenue officials. The Québec Ombudsman's intervention resulted in the reimbursement for the three years in question.

3.1.3.7.1 TEACHER EDUCATION

In the course of the last few years, the Québec Ombudsman has received complaints from young teachers concerning their probationary placements. The investigations identified problems with the supervision of such placements, and to a great extent, the contravention of the rules for issuing teaching certificates. The Québec Ombudsman was called on to formulate its suggestions on a consultation document for the purpose of amending the *Règlement sur l'autorisation d'enseigner.*[19] It called into question the abolition of the review committee for persons who are refused the teaching certificate, and emphasized the danger of entrusting the evaluation of student teachers in placement solely with the director of the establishment without defining this duty with parameters that ensure a measure of objectivity and a measure of rigour in the evaluation.

3.1.3.8 STUDENT FINANCIAL ASSISTANCE

To democratize access to higher education, in the course of the 1960s, the Government of Québec created the *Loans and Bursaries Program*. The goal of the program is to allow less affluent persons access to higher education and vocational secondary programs, and thereby affirm the right of citizens to equality of opportunity. Until recently, this program was administered by the Direction générale de l'aide financière aux étudiants, [student financial assistance] a unit of the ministère de l'Éducation, which dispensed a wide variety of direct services to citizens. As of April 8, 1997, this unit became an autonomous service unit, now known as Aide financière aux études (AFE or student financial assistance), and it practices results-based management.

Although the program is auxiliary in nature because it is based on the principle that students are primarily responsible for the costs related to their studies, its major objective is to enable disadvantaged students to pursue their studies with adequate financial assistance.

18. **The Social Contract**
    1. ***Ensuring Government Transparency***
        1.2 Give citizens all the information they need in a timely manner.
19. *Règlement sur l'autorisation d'enseigner*, (1997, G.O.2, 5624).

3.1.3.8.1 ON PERFORMANCE

In order to evaluate its effectiveness, the autonomous service unit adopted performance indicators measuring, among other things, effectiveness and the quality of services. Quality is measured in particular by the level of satisfaction with the interactive telephone system that allows people to obtain information about the progress of their application 24 hours a day from a recorded message system: the anticipated date of payment of the financial assistance, the amount granted, etc. Effectiveness is also measured by the level of satisfaction among students receiving assistance as expressed in the results of a telephone poll that covers several aspects of the plan.

L'Aide financière aux études also evaluates its effectiveness by how quickly civil servants hand down decisions; the shorter the processing time of an application for assistance, the better the organization's performance. The organization then ensures that the waiting period is shortened.

In the opinion of the Québec Ombudsman, such measures do not provide a complete portrait of student satisfaction. They merely indicate whether the unit has shortened its processing time from one year to the next. They do not indicate, for example, the nature of the applications submitted to the Examination Committee for Exceptional Cases, or whether the number of such cases has increased or whether the students were satisfied with the response they obtained. Such information is, however, very important because the Examination Committee for Exceptional Cases studies cases of inadequate financial assistance that compromises the pursuit of studies. If a growing number of students no longer have access to studies following an amendment to a law, to a regulation or to a policy, then there would be serious cause to question such an amendment and to determine whether it counters the goal of the law, which is to promote access to studies.[20] This type of information, however, was not chosen to measure the unit's performance.

In 1998–1999, one of this autonomous service unit's performance-improvement objectives consisted of increasing the amount of recovered outstanding debt. Outstanding debt is primarily the amount of overpaid grants and defaulted loans, that is to say, the loans that the Department had to reimburse the students' creditors. In order to obtain its objective, the Department demanded higher sums from students and former students. According to such logic, the higher the total recovered amount, the better the organization's performance.

3.1.3.8.2 ACCESS TO EDUCATION COMPROMISED

The restrictive application of a number of standards aimed at increasing the amount of recovered outstanding debt has had negative consequences. Thus, in the name of effectiveness, access to higher education for the most disadvantaged[21] has been compromised.

To be eligible for financial assistance, the student who is indebted to the Department must first repay half the amount and sign a repayment agreement for the balance.

20. **The Social Contract**
    5. *Serving Citizen*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

21. **The Social Contract**
    5. *Serving Citizen*
    5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

The Québec Ombudsman adheres to the objective of making citizens more accountable. It recommended, however, that in the case of individuals, the Department show flexibility, particularly for persons who resume studies after having received social assistance benefits for several years, and who have not been able to save any money.

Requiring such persons to immediately repay 50% of their debt amounts to preventing them from resuming their education.[22]

The autonomous service unit welcomed the Québec Ombudsman's suggestions, and committed to showing openness and flexibility in such circumstances. But experience shows that progress remains to be made.

3.1.3.8.2.1 WHEN INTRANSIGENCE LEADS TO ABANDONMENT

In the autumn of 1999, a young single mother receiving social assistance resumed studies and applied for financial assistance. Her application was refused because she could not repay half of her debt, that is $2,200. She approached the Québec Ombudsman.

Thus began several weeks of negotiations during which the Québec Ombudsman suggested ways of easing the terms of repayment in such a way as to allow the mother to resume her studies and the Department to recover the outstanding debt. But the Department rejected the suggestions because the student:

- must first repay an overpayment;
- had late interest payments with her financial institution;
- had an academic profile that suggested that she would not likely succeed;
- would reach an excessively high level of debt.

The Québec Ombudsman held that a number of elements had been underestimated. In fact, the citizen was ready to sign an agreement authorizing l'Aide financière aux études to recover the outstanding debt directly from the financial assistance of the current year. Many students experience similar circumstances. Moreover, the official in charge of assistance at her education establishment committed to loan her the sum needed to repay the late interest. Finally, the difficulties shown in the academic profile were explained by health problems and family responsibilities.

The Québec Ombudsman also stressed that although the student was living on social assistance benefits from 1994 to 1999, she nevertheless continued to make monthly payments to her financial institution to repay the second loan received in 1993–1994. Such perseverance in her commitment demonstrated that she was serious about resuming her studies, and earned her the support of her financial institution.

Even though in the opinion of the Québec Ombudsman this was an exceptional situation, l'Aide financière aux études refused to ease the terms of repayment,[23] which forced the

22. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
        3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
23. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
    7. ***Respecting Personal Dignity***
        7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

student to abandon studies for the fall 1999 trimester and apply for social assistance benefits.

But the return to school finally came about through the combined efforts of the Québec Ombudsman and the official in charge of financial assistance of the education institution who succeeded in collecting the sum required by collecting donations generously offered by members of the community in order to allow this young mother to pursue her studies. She therefore resumed a full-time course of study in the winter trimester of 2000, and the latest report is that she has succeeded. It is clear that if l'Aide financière aux études does not ease its repayment terms in such a situation, it is seriously compromising the program's primary objective, which is to facilitate access to education. Such a situation is entirely unacceptable.

3.1.3.8.2.2 A MUCH AWAITED OUTCOME...

The Québec Ombudsman has challenged the interpretation of section 43 of l'Aide financière aux études and the Department's administrative inflexibility. Indeed, the autonomous service unit refused to allow students who have declared bankruptcy to reapply for financial assistance, unless they have repaid their student loan in full or have signed an agreement to do so, even though they have been freed of such an obligation by virtue of a court order discharging them from bankruptcy.

In 1998, a student discharged from bankruptcy, who had signed a repayment agreement in order to reapply for financial assistance, pleaded his case before the courts. On November 26, citing articles 1379 and 1437 of the *Civil Code of Québec*,[24] the court nullified the clause of the repayment agreement, which it assimilated to a contract of adhesion, because the clause was abusive and was excessively and unreasonably detrimental to the adhering party (the student).

In February 1999, the Québec Ombudsman asked the Department about how it intended to apply this decision to other situations in which students discharged from bankruptcy wish to resume their studies, and how it would treat agreements that had already been signed since section 43 came into force in 1990.

The Department replied that for students who already signed an agreement after the coming into force of section 43 of the *Loi sur l'aide financière aux études*,[25] and that for those who had not yet done so and who wished to resume their studies, it would examine each case according to the criteria recommended by the court.

The Québec Ombudsman sent the Department a list of all those who had approached him, and who, despite the discharge of debt resulting from their bankruptcy, are held responsible for repaying student loans. It also requested that a list be made of all involved cases since the coming into force of section 43. The Department agreed to study each of the submitted cases and to make the appropriate changes. Several citizens discharged from bankruptcy have already had their student loans cancelled and are once again eligible for financial assistance.

24. *Civil Code of Québec*, L.Q. 1991, c. 54.
25. *Loi sur l'aide financière aux études*, L.R.Q., c. A-13.3.

3.1.3.8.2.3 WHO IS RESPONSIBLE?

For the year 1998–1999, a student and single mother requested financial assistance and received a loan of $2,605 for the autumn trimester as well as a grant to be paid in two instalments: January 2000 and in mid-March. The student, considering the assistance to be inadequate, noted that some sources of income had been taken into account in the calculation of the amount of her assistance, whereas they should not have been. In fact, the standards stipulate that a proportion of income earned during the period in which a person is receiving social assistance benefits should not be taken into account in the calculation of the financial assistance. Following a second calculation, the student was awarded an additional amount of $160 for the autumn trimester, that she could not access until the winter trimester. Dissatisfied with the result, she approached the Québec Ombudsman.

The investigation revealed that when the second calculation was determined, the grant cheques allotted for the winter 2000 trimester as a result of the first calculation had already been issued, dated January 6, 2000 and sent to the education establishment. In fact, the second calculation granted the student an amount greater than $160 and was payable in the autumn. But since the cheques had already been sent, l'Aide financière aux études replied that it could do nothing: it could not pay out the amount of the supplemental bursary to which the student was entitled for the autumn.[26] Even though the Christmas holiday season was about to begin and even though the student had a young dependent child, she had to wait until January.

The Québec Ombudsman then suggested to the student that she contact the official in charge of financial assistance at the establishment in order to obtain an advance. Unfortunately, the school does not generally authorize advances of funds. In the face of the destitution of the student and her child, the Québec Ombudsman urged the financial assistance officer to explore all possible solutions. Finally, the official reached an agreement that enabled the student to receive the amount of money to which she was entitled for the autumn trimester, and this, before the Christmas holidays, when all the education establishments were closed.

Fortunately, this student's problem was solved. But the manner in which it was solved was extraordinary. Once again, other people should have intervened to ensure that the student receive the assistance to which she was entitled.[27] This situation is unacceptable.

3.1.3.8.2.4 WHEN STUDENT FINANCIAL ASSISTANCE IS BLINDED

In the autumn of 1999, a student applied for financial assistance for the year 1999–2000. She was referred to the Loans and Bursaries Program by Emploi-Québec which, experiencing severe funding problems at this time,[28] had restricted access to its training programs. For the purposes of calculating financial assis-

26. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
    4. ***Respecting the Rules of Natural Justice***
        4.5 Avoid all forms of discrimination or unequal treatment.
27. **The Social Contract**
    7. ***Respecting Personal Dignity***
        7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.
28. See chapter 3.1.9, p.103

tance, l'Aide financière aux études took into account sums paid by Emploi-Québec as part of training measures, which yielded an amount lower than the student had expected to receive to provide for her needs and those of her child. The student considered her contribution to be too high, all the more so since the sums paid by Emploi-Québec had only been used for her studies. Dissatisfied, she approached the Québec Ombudsman.

By virtue of the applicable regulations, students do not have to declare sums received when the agency that finances the program of studies assumes all associated fees (tuition, transportation, living expenses, etc.) These sums cannot be considered as income; they are therefore not considered as part of the student's contribution.

To apply this standard, the Department developed a table of existing measures, specifying which entirely or partially covered the expenses incurred by students.

Now, the situation of this student did not correspond to any of those described in the table. The Department thus concluded that the sums paid should be calculated under the same category as employment earnings. After verification, the Québec Ombudsman noted that the student had benefited from an exceptional extension of a program recently abolished, which explains why it did not appear in the table. It also learned that all the expenses related to the training received by the student had been entirely covered for a period of two years by Emploi-Québec. Moreover, it emphasized that the type of measure to which the student had participated might correspond to an existing training program that was included in the table.

The Department acknowledged that the program in question could be correlated with an existing program, and it paid increased assistance to the student.

3.1.3.8.2.5 PRESUMED GUILTY

L'Aide financière aux études withheld financial assistance from a student suspected of having made a false declaration in her assistance application for the year 1999–2000. In November 1999, she approached the Québec Ombudsman.

The study revealed that the student had been under investigation since the summer of 1999. L'Aide financière aux études presumed that she had made a false declaration by stating that she no longer lived with her de facto spouse, while the ex-spouse, also a student, had given the address of his ex-partner on his own application.

The Québec Ombudsman intervened because the agency had based its decision to withhold the money on a mere assumption, before the investigation was even concluded.

The situation was entirely different: when she applied for assistance in May 1999, the couple had separated. Afterward, they resumed living together, but only in October 1999.

The Québec Ombudsman was of the opinion that the Department could not withhold the money when it had not completed its investigation. The Québec Ombudsman had already intervened in similar situations and it had been agreed that this would not happen again . . .

L'Aide financière aux études finally granted the assistance before it completed its investigation. However, the Québec Ombudsman recalled that the study of this application should take into account the couple's real situation.

3.1.3.8.2.6 CONTRIBUTION CALCULATED ON INACCURATE INFORMATION

L'Aide financière aux études asked a student to repay $600, as a grant overpayment for the year 1998–1999.

The student considered the she did not owe this amount because the Department took into account a monthly support payment of $225 ostensibly paid to her by her mother. The student had not seen her mother for two years and the mother had not paid her the support payment since September 1997. To establish proof, the student had to send a copy of the agreement approved by the Court, in which it was mentioned that she was supposed to succeed at her studies and provide a copy of the transcript of her marks. In fact, she had interrupted her studies. The mother had therefore ceased paying the support payment. Furthermore, a document in the file of the support payment collector indicated that the last payment was dated September 1997. The student received no parental support. Afterwards, she had resumed her studies, but without assistance from her parents.

The Québec Ombudsman emphasized that the proof was inadequate and that the student was entitled to additional assistance.[29]

3.1.3.8.2.7 ENTITLED TO A BURSARY, YES OR NO?

L'Aide financière aux études may grant, if the student's financial needs so justify, in addition to a loan, financial assistance in the form of a bursary to cover the shortfall in earnings. According to the *Règlement sur l'aide financière aux études*,[30] a masters' level university student may receive assistance in the form of loans and bursaries for five trimesters. He is also entitled to financial assistance for the sixth and seventh trimesters, but only in the form of loans.

A student may be refused a bursary because he has reached the maximum number of trimesters for which he is entitled to receive one.

The Québec Ombudsman's investigation revealed that the summer of 1998 constituted the fifth and final trimester for which the student was entitled to receive financial assistance. At that time, he was told that he would only be entitled to assistance in the form of loans for the autumn and winter trimesters. The student was surprised. In his opinion, he had not reached the maximum number of trimesters. He considered that the summer of 1998 constituted instead his fourth trimester at the masters' level and that in the autumn, he would still be entitled to a grant. He considered that an error had made its way into his file concerning the year 1989–1990, when he had been registered for the entire year, but he had abandoned his studies in the winter of 1990. However, the computerized system contradicted the student's statement and indicated that he had been a full-time student for both trimesters.

29. **The Social Contract**
4. *Respecting the Rules of Natural Justice*
4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

30. *Règlement sur l'aide financière aux études*, A-13.3, r.1.

The student then provided a certificate from the university proving that he had abandoned his studies in the winter of 1990. L'Aide financière aux études considered the document to be inadequate because it did not indicate the exact date of his withdrawal. It then demanded a transcript of marks from the university.

The Québec Ombudsman considered this to be an unjustifiable request because a transcript of marks does not indicate the date of withdrawal from a course or the payment of financial assistance. In fact, the student could very well have continued his studies during the winter 1990 trimester without applying for financial assistance and thereby not use up one trimester of assistance out of the five stipulated by the regulation.[31]

The Québec Ombudsman urged the Department to verify its own archives, because it was the Department that was in possession of the information. The verification confirmed the student's statement, and the Department then granted the bursary.

31. **The Social Contract**
7. *Respecting Personal Dignity*
7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

3.1.4

MINISTÈRE DE LA FAMILLE ET DE L'ENFANCE

"The ministère de la Famille et de l'Enfance supports the development of families and children and helps them attain their full potential. Its main responsibilities with regards to the family are:

- to ensure that families live in an environment which offers services that meet their diverse needs, specifically with relation to housing, health, education, child custody, security and leisure;
- financially support families — particularly lower-income families — so as to ensure that the basic needs of children are met;
  - provide parents with financial support in order to give them easier access to maternity, paternity and parental leaves.

The Department's responsibilities with regards to children are:

- to foster each parent's effective participation in the education of their child;
- set objectives favouring the full development of children; develop and maintain a network of childcare centres which provide educational childcare and support for parents;
- favour the harmonious development of childcare services;
- facilitate each family's access to these services."[1]

3.1.4.1 DEPARTMENT'S NEW STRUCTURE

For the Department, 1999–2000 was a year marked by the expansion of services, particularly with the arrival of new staff members and an increased pace in the creation of day care spaces.

The new administrative structure was implemented between mid-September 1999 and the winter of the same year. These profound changes caused uncertainty and hesitation — in both citizens and the Québec Ombudsman — with regards to decision-making and the processing of requests for corrections. From this came unjustified delays and excessive administrative rigidity.

3.1.4.2 PROCESSING CITIZEN COMPLAINTS: A SERVICE THAT CALLS FOR IMPROVEMENT

When the new team arrived at the Direction de la gestion et de l'organisation du réseau de garde [childcare network management and organization department] at the end of 1999, citizen complaints began to be processed more rapidly and there was improved collaboration with the Québec Ombudsman.

1. MINISTÈRE DE LA FAMILLE ET DE L'ENFANCE. *Mission*, [www.famille-enfance.gouv.qc.ca], 2000.

Though services were expected to improve somewhat with the new client service departments, the Direction surpassed all expectations by adopting the mandate of instituting a complaints office for the Department and the network of childcare services. With the creation of this complaints office, the Department was adhering to the Québec Ombudsman's recommendations pertaining to the necessity of implementing internal mechanisms for settling disputes.

3.1.4.3 COMPLAINTS RECEIVED IN 1999–2000

The number of complaints received has slightly decreased, from 70 in 1998–1999 to 62 in 1999–2000. The Québec Ombudsman notes that citizen complaints were, overall, of the same type as the previous year. They were, however, divided into more diverse categories. Some new categories have been added — specifically, claims of overpayments for childcare expenses under the terms of the *Exemption and Financial Assistance for Child Day Care* program which was abolished on September 1, 2000, as well as problems related to childcare workers' salary adjustments and qualifications.

3.1.4.4 COMPLAINTS PROCESSED IN 1999–2000

The number of completed investigations went from 4 in 1998–1999 to 21 in 1999–2000. This increase is mainly due to a major legislative amendment that addressed a recommendation made by the Québec Ombudsman. In fact, *An Act respecting child day care*[2] now enables home childcare providers to appeal to the Administrative Tribunal of Québec on decisions made by a childcare centre to suspend or revoke a licence. Several complaints submitted to the Québec Ombudsman in 1998–1999 were also settled. Overall, the rate of substantiated complaints for this organization stands at 43% for 1999–2000.[3]

3.1.4.5 UNIVERSAL ACCESS TO $5-A-DAY SPACES

Among the recurring complaints, those pertaining to access to $5-a-day spaces are the most numerous (14.8%), and this occurs despite the significant increase[4] in the number of new spaces created in Québec.

The problems raised stem from the fact that the network simply cannot meet demand for the basic universal service[5]; as such, many citizens are questioning the universal nature of the program in terms of fairness and in terms of the priority granted to more disadvantaged citizens. They are also questioning the Department's policy of not intervening in decisions made by the childcare network, and the means taken for managing and developing the program.

Given that the Department does not expect to strike a balance between supply and demand until 2005, parents will be forced to find and finance their own childcare services, and claim the tax refund which will be available at the end of the year. The fact that the Exemption and Financial Assistance for Child

2. *An Act respecting child day care*, R.S.Q., c. S-4.1.
3. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.
4. Based on available data, the ministère de la Famille et de l'Enfance has more than tripled the number of new day care spaces since 1997-1998, resulting in some 15,000 new day care spaces for 1999-2000.
5. **The Social Contract**
   5. *Serving Citizens*
      5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.
   8. *Doing the Utmost to Act Responsibly*
      8.4 Keep promises made to citizens.

Day Care program was abolished on September 1, 2000, makes the situation very difficult for disadvantaged parents and creates inequality, thereby eroding universal access.

The Québec Ombudsman intervened with the Minister to ask her to adopt temporary corrective measures that would better meet the plan's standards of universality during the transition period. The Québec Ombudsman is awaiting the Minister's response.

3.1.4.6 NO RETROACTIVE SALARY ADJUSTMENTS FOR CHILDCARE WORKERS IN PRIVATE SUBSIDIZED CENTRES

At the end of 1999, the Department granted childcare centres and subsidized private day care centres supplementary budgets to increase the salary of childcare workers retroactively as of April 1, 1999.

3.1.4.6.1 WHAT ABOUT MY SALARY?

A childcare worker, who had changed day care centres in August 1999, turned to the Québec Ombudsman for help because the Department and the Commission des normes du travail refused to intervene with the owner of the day care centre where she previously worked. Her former employer had refused to grant her a pay adjustment while she was working there.

The Québec Ombudsman's investigation revealed that the amount had been divided up among her former work colleagues in order to reduce the wage gap with the public sector. The owner had simply followed the orders of her association following an agreement entered into with the Department. Many private day care centres limited themselves to disbursing the pay adjustment budgets, in the form of a bonus, to the childcare workers of their choice or to the childcare workers employed by them at the time of payment.

This operation was endorsed by the Department. In fact, the agreement entered into by the Department and the various groups of private day care centres granted each day care centre the right to set the terms for paying out the money, all in the name of the private sector's managerial independence. But, at the same time, very specific standards for the redistribution of this money were defined with unions and childcare centres in order to ensure that retroactivity from April 1, 1999 would be respected. The Department required that the money be used by subsidized private day care centres for pay adjustments, not for making profit.

This means that a very serious injustice was committed, in which the Department played a significant role.[6] A grant was indirectly applied to the day care centre's profit margin and, as such, the latter would not be obligated to adjust salaries in accordance with those of public day care centres. Despite the Québec Ombudsman's request, the Department refused to intervene in order to rectify the situation, claiming that this was a private matter and that the owners claimed that this would represent a salary loss at the centre. The Québec Ombudsman intends to reiterate its position.

6. **The Social Contract**
3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.1.4.7 PROCESSING COMPLAINTS IN THE NETWORK

One of the major problems seems to be that childcare centres refuse to forward the grounds for complaints to the home childcare provider, in the name of *An Act respecting Access to documents held by public bodies and the Protection of personal information.*[7,8] Upon finding themselves in a crisis situation, many of these childcare providers turned to the Québec Ombudsman to be informed of the grounds for complaints filed by parents; through its silence and refusal to act, the Department was putting these childcare providers at risk of losing their recognition. It was often too late to turn to the Commission d'accès à l'information.

The investigations helped identify what was missing in the information provided, as well as draw attention to the lack of understanding and the ignorance with respect to each party's obligations and also to the virtual non-existence of adequate means of recourse. Through referral and mediation, the Québec Ombudsman continued to act as an intermediary between the parties, which allowed the dispute to be settled. It informed the Department of the shortcomings and adverse effects of its non-intervention policy.

The administration admitted that it must inform and train people in the network. It also hopes that the future complaints-processing program will rectify the situation. The Québec Ombudsman will monitor progress on these problems and make sure that the Department fulfills its obligations in settling these disputes.

3.1.4.8 CORRECTIVE MEASURES HARD TO OBTAIN

When problems involve more than one stakeholder or stakeholders outside the Department, intervening becomes a lengthy and delicate matter. Solutions often come in the form of amendments to administrative policies and regulations. The setting of precedents and the fear of displeasing partners in the network further burdens and slows the conflict resolution process. Furthermore, because the network is decentralized, the Department or the Québec Ombudsman is often the only means of recourse for parents.

Because complaints often involve problems with the system, the Québec Ombudsman cannot always intervene rapidly. Access to $5-a-day spaces in day care centres provides a good example since childcare centres directly offer the service to the public. If the Department can implement measures which foster their development, the childcare centres will develop them according to their own deadlines, after having received the support of the Conseil régional de développement. The presence of intermediaries between citizens and the subsidizing State complicates both the organization of the service and the extent to which expectations are met.

7. *An Act respecting Access to documents held by public bodies and the Protection of personal information*, R.S.Q., c. A-2.1.
8. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.

3.1.5

MINISTÈRE DE LA JUSTICE

The ministère de la Justice is responsible for ensuring that the rights and freedoms of citizens are recognized and respected. It also advises the government on the legality of its decisions and it assists the Minister of Justice in his role as Attorney General.

Despite a decline of 33% in investigations, compared with the previous year, the rate of substantiated claims[1] is unchanged this year at 22%. As in the past, the collection of fines generated the majority of complaints. The uncompromising attitude of a number of collectors has placed citizens in a precarious financial situation. Paradoxically, the objective is lost sight of: recovering sums of money owed by the citizen. The majority of matters submitted to the Québec Ombudsman also concern the Société de l'assurance automobile du Québec since contravening the *Highway Safety Code*[2] entails the imposition of fines.

3.1.5.1 THE FINES COLLECTOR: MANAGEMENT PROBLEMS

Since the recent creation of the regional collection offices, the Québec Ombudsman has noted excessive inflexibility and a lack of coordination in the settlement of payment agreements.

3.1.5.1.1 AT THE COLLECTOR'S WHIM

A citizen concluded a payment agreement with the Percepteur des amendes de Québec [Québec City Fines Collector] for a fine of $139, following a conviction that occurred in Joliette. An amount of $20 was paid upon signing the agreement, then a monthly payment of $20 was to be debited on the citizen's credit card.

However, the collector in Joliette refused to ratify the agreement. Without even attempting to contact the citizen to sign a new agreement, this collector sent notification to the Société de l'assurance automobile du Québec in order to suspend his driver's licence.[3]

The Société informed the citizen that his licence would soon be suspended. Worried, he contacted the Percepteur des amendes de Québec. The collector said he did not understand the situation. The citizen requested the Québec Ombudsman's assistance. The investigation revealed that the collector in Joliette did not want to keep a credit card number in the file. The Québec Ombudsman had to persuade the collector to honour

1. The rate of substantiated claims is the number of founded complaints out of the number of investigations completed by the Québec Ombudsman.
2. *Highway Safety Code*, R.S.Q., c. C-24.2.
3. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

the agreement duly signed[4] and to advise the Société to lift the suspension of the licence, at no cost, which was done.

3.1.5.1.2 ABUSE OF POWER

A school bus driver concluded an agreement with the Percepteur des amendes of Saint-Hyacinthe in order to pay a fine of $192. He respected his agreement for several months, but in July, he was unable to make his payment. During the summer, his only income was employment insurance. He therefore asked the collector in charge of his file to grant him an extension. He was sent to the Service régional de perception des amendes [regional fines collection service], which was henceforth responsible for collection files.

He contacted the Service régional, which refused to grant his request. No extension is granted when an agreement is undertaken. Not only was he refused an extension, the Service régional advised the Société d'assurance automobile du Québec to suspend his driver's licence, thereby compromising his return to work at the end of August, and this, for a balance of $62.[5]

4. **The Social Contract**
   8. ***Doing the Utmost to Act Responsibly***
   8.4 Keep promises made to citizens.
5. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
   3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
   3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
   7. ***Respecting Personal Dignity***
   7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.
6. **The Social Contract**
   4. ***Respecting the Rules of Natural Justice***
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all the relevant information.

The Québec Ombudsman persuaded the Department of the merit of the citizen's request. The Department agreed to cancel the suspension of the licence and withdraw legal fees of $28 pertaining to the notification sent to the Société de l'assurance automobile du Québec. The citizen also benefited from an additional extension to make his payment.

3.1.5.2 UNJUSTLY PENALIZED

In January 1996, the collection of support payments, formerly under the jurisdiction of the ministère de la Justice, was transferred to the ministère du Revenu.

Since August in 1995, a citizen had been unsuccessfully attempting to settle his situation with the ministère de la Justice. In 1999, the citizen, still dissatisfied, renewed his efforts, this time addressing his complaint to the Québec Ombudsman. The facts are given below.

Every month, the Department deducted a support payment from the citizen's salary. In August 1995, the Department mistakenly sent the support payment of $900 to a person other than the citizen's ex-spouse, who immediately declared that she had not received her payment.

With no further formality, the Department seized half the gross salary of the citizen for a number of weeks, the usual consequence for non-payment of support.[6]

The citizen attempted to have his file adjusted in order to obtain a reimbursement of the sum of $900 deducted as an overpayment.

The public servants asserted that it was impossible for them to assist him,[7] and they advised him to contact a lawyer. Experiencing serious health problems, the citizen relinquished his fight.

After learning of the existence of the Québec Ombudsman, he requested its intervention. The Québec Ombudsman studied the case and quickly detected the error. It succeeded in getting the Department to reimburse the citizen, including the interest incurred over four years.

3.1.5.3 A LONG WAIT FOR JUSTICE

Since 1994, the Department had consistently refused to reimburse sums to parents, contracted during private criminal litigation to convict a person accused of committing grave and repeated sexual assaults against their son.

Yet, at every step of the proceedings, the courts had fully recognized the gravity of the alleged crimes. The Attorney General had, moreover, taken charge of the litigation, shortly before the trial, and had secured the conviction of the aggressor, then had the verdict upheld at the Québec Court of Appeal, and this on the 20 counts of the indictment.

The Québec Ombudsman attempted three times to persuade the Department. In the absence of specific legal regulations that would enable the resolution of a difference of this nature, it cited the principles of reasonableness and equity.[8] The Québec Ombudsman called on the Department to acknowledge the role that the Attorney General should have exercised, from the outset, as the defender of the public interest in criminal matters. The Department remained adamant. The Québec Ombudsman therefore considered it essential to notify the government of the situation and of its intention to inform the National Assembly, as permitted by section 27 of the *Québec Ombudsman Act*.[9]

After having asked the Department to proceed with a new examination, the Secrétaire général du gouvernement finally acknowledged the unfairness of the burden placed on these citizens for an excessive period of time, and the Secretary mandated a private practice lawyer to negotiate the terms of a proposed settlement with them.

On July 27, 2000, after six years of claims, the parents were informed that an amount of $38,771.86, including interest at the rate stipulated in section 28 of the *Act respecting the ministère du Revenu*,[10] would be paid to them for the saga through which they had lived.

3.1.5.4 A TENACIOUS GOVERNMENT...

The Dubreuil affair continued to spark interest among the public. The Minister of Justice and Attorney General finally responded to the Québec Ombudsman's Report on the

7. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.
   4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.
8. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
9. *Public Protector Act*, R.S.Q., c. P-32.
10. *Act respecting the ministère du Revenu*, R.S.Q., c. M-31.

Dubreuil affair on June 13, 2000, after 28 months of deliberation.[11]

None of the Québec Ombudsman's conclusions found grace in the eyes of the Attorney General. Still convinced that the citizen should have been compensated, the Québec Ombudsman tabled a special report at the National Assembly on June 14, 2000, inviting MNAs to hear the Québec Ombudsman on this matter. A saga . . . to be continued.

11. LE PROTECTEUR DU CITOYEN, *Annual Report 1997–1998*, p. 90, 91.

3.1.6

MINISTÈRE DU REVENU

The ministère du Revenu collects income tax and consumption taxes from taxpayers for the government. The Department's role includes advising the government on fiscal and socio-fiscal policies.

The Department also administers certain tax-related social programs including the Automatic Support Payment Collection program and the Shelter Allowance program which provides direct financial assistance for rent to low-income households.

The ministère du Revenu is also responsible for collecting Québec Pension Plan contributions as well as contributions for the healthcare and prescription drug insurance plans. In addition, the Department has the responsibility of collecting the goods and services tax in Québec.

The number of investigations undertaken by the Québec Ombudsman remains practically unchanged with this year's total at 1,410 and last year's total at 1,445. The rate of substantiated complaints is stable at 49%.[1]

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.
2. **The Social Contract**
   6. ***Understanding Citizens and Making Their Lives Easier***
   6.2 Create user committees.

3.1.6.1 TAXATION

3.1.6.1.1 NEW TAX MEASURES

A new tax system has made taxation easier and more equitable for the majority of individuals, most notably for those who enjoy few tax benefits. From now on, spouses who opt for the simplified tax system can both produce their income tax returns on the same form. Within the context of this system, deductions and tax credits are replaced by a lump sum of $2,350, and no supporting documents are required in order to benefit from these tax credits.

The Québec Ombudsman received few additional complaints as a result of this new system. We can therefore assume that the Department was well prepared for its implementation. The form had been previously validated by community groups.[2]

3.1.6.1.2 MECHANISMS FOR PROCESSING COMPLAINTS

In order to better serve taxpayers who file complaints and to render decisions more rapidly, the Department's complaints office expanded its mandate in the summer of 1998. The number of employees increased from six to thirteen. However, as far as the Québec Ombudsman is concerned, these changes did

not bring about the expected results. In fact, the Department noted that there were long waiting periods again this year. The reality is that when a citizen files a complaint with the ministère du Revenu, it is the beginning of a laborious bureaucratic process. This only adds to the institution's legendary rigidity.

For each new complaint, the office orders the summary reports from the concerned sector and, without even questioning or verifying the information, takes a position based on this non-validated report. Last year, the Québec Ombudsman pointed out the flaws in the complaints examination procedure — the office did not sufficiently question the decisions of the Department's different sectors or their failure to take proper action. Unfortunately, the situation remains virtually unchanged.

3.1.6.1.3 BETTER COMMUNICATION

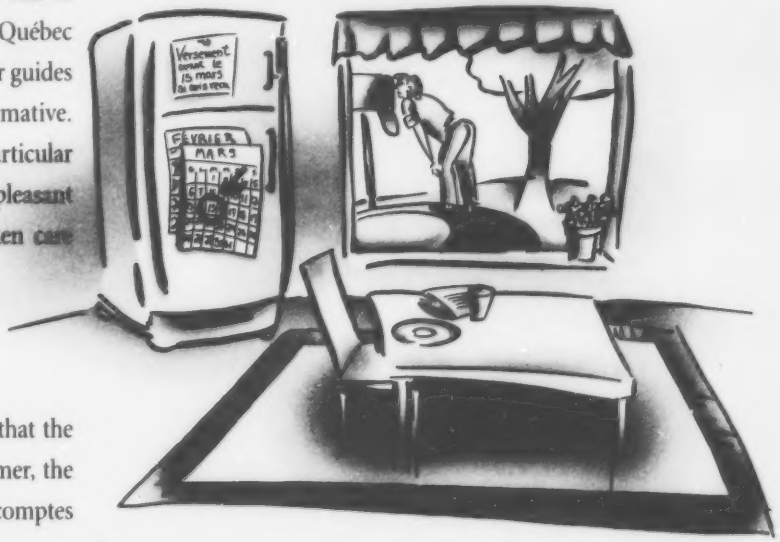
Transmitting clear and exact information should be one of the Department's main concerns. This year, the Québec Ombudsman asked the Department to amend its user guides and internal policies to make them more informative. Citizens demonstrated their dissatisfaction with particular decisions that had been made and many had the unpleasant impression that the Department had purposely taken care not to provide them with adequate information.

3.1.6.1.3.1 STILL WAITING ...

Several citizens informed the Québec Ombudsman that the Department was misleading them. During the summer, the Department sent a form entitled "Versement d'acomptes provisionnels par un particulier" ["payment by instalment for individuals"] which included the following note: If, as of next February, you are still required to make payments, you will receive a form for this purpose on March 15.

Though many of the taxpayers were obligated to make payments, not all of them received the form in question. By law, the Department is not obligated to send the forms or even notify individuals of the amount to be paid. However, the wording of the note led taxpayers to believe that if they did not receive the form they would be exempt from making payments.

The Québec Ombudsman recommended that the Department change the text of the first form, which was sent during the summer, so as to remind taxpayers that they are responsible for making payments whether or not they receive



the second form.[3] This way, the text would be clearer and the Department's client group — most notably senior citizens — would be adequately informed.

The Department has taken steps to make the necessary corrections before the next mass mailing of the form.

3.1.6.1.4 ADMINISTRATIVE COMPLEXITIES

Tax laws result in huge responsibilities and countless administrative tasks for small business owners . . . and, unfortunately, these entrepreneurs are not always aware of the many existing legal complexities.

3.1.6.1.4.1 IN THE NAME OF FAIRNESS

In 1991, a self-employed worker started a small word-processing business. A few months later, the Québec sales tax and the goods and services tax came into effect, obligating the citizen to register with the Department. As a result, he collected taxes from his clients in 1991 and 1992. In 1993, he learned that he was not obligated to collect these taxes because, by law, he was considered to be a small supplier (his annual sales were lower than $30,000). He therefore decided to simply stop collecting taxes from his clients without any additional formalities.

But, in 1998, the taxpayer consulted the Québec Ombudsman after receiving an assessment notice claiming $8,092.84 in unremitted taxes for the period between January 1, 1993 and September 30, 1996. Since he had been unaware that he had to make a written request in order to cancel his registration in 1993, he was still considered to be registered.

The Department was quite firm in its position stating that in order to stop collecting taxes from his clients, the citizen should have filed a written request in order to cancel his registration. Since he did not carry out this formality, the citizen had no choice but to pay the claimed taxes himself and trace back his clients from 1993 to 1996 and ask them for retroactive payment.

The Québec Ombudsman, however, felt that there was another option to consider — that the Department act fairly[4] and cancel the amount owed by the citizen.

The fact is that the citizen was not trying to defraud the Department, nor was he trying to shirk his tax responsibilities. The only mistake he made was failing to file a written request in order to cancel his registration. Given the circumstances, should an honest mistake result in such a large debt?

After numerous failed attempts, the Québec Ombudsman was compelled to call on the Deputy Minister and ask that the assessment be cancelled in its entirety. In the end, the Deputy Minister agreed.

3. **The Social Contract**
   1. ***Ensuring Government Transparency***
      - 1.2 Give citizens all the information they need in a timely manner.
      - 1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.
4. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      - 3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
      - 3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
      - 3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.1.6.1.4.2 ABUSIVE TREATMENT?

A taxpayer owed the Department $3,000. He neglected to make arrangements for payment with his collection agent from the Centre de perception fiscale [tax collection centre]. The Department therefore began to garnishee $194 from his wages every week — an amount which represented approximately 30% of the citizen's gross income. Deeming this amount to be excessive, the taxpayer turned to the Québec Ombudsman for help. He claimed to be willing to sign a repayment agreement.

The Québec Ombudsman convinced the collection agent that the amount being deducted from the taxpayer's salary was too high, given the latter's financial obligations.[5] Based on his budget and the evaluation of his ability to pay, the taxpayer was only able to reimburse $75 per week. The Department accepted.

3.1.6.1.5 IMPACT ON OTHER GOVERNMENT PROGRAMS

The Department's actions can have repercussions on many other government departments and agencies, and can often cause problems for citizens. The following cases involve the ministère de l'Éducation, the Inspecteur général des institutions financières, the ministère de la Solidarité sociale and the Régie des rentes du Québec.

5. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
   3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.
6. *An Act respecting the ministère du Revenu*, R.S.Q., c. M-31.
7. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
   5. *Serving Citizens*
   5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
   5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

3.1.6.1.5.1.1 WHO IS AT FAULT?

The Department made changes to a citizen's income tax return for the 1995 fiscal year and granted him an additional $1,000 refund. Since this citizen had a $12,000 debt with the ministère de l'Éducation, he assumed that the money would be directly transferred to the latter in accordance with section 31 of *An Act respecting the ministère du Revenu*.[6] This section states that the ministère du Revenu has the power to earmark a tax refund for payment of amounts owed to the government by virtue of a law other than a tax law.

In August 1997, the citizen's tax return was audited by the ministère du Revenu and the previously-made modifications were corrected. This resulted in a $1,300 assessment, including penalties and interest.

Taken by surprise, the taxpayer refused to pay since he deemed that he was being penalized for something which was not his fault. He felt that the Department should simply claim the overpaid amount from the ministère de l'Éducation who would in turn maintain the citizen's original debt.

The Québec Ombudsman intervened with the ministère du Revenu who agreed to recover the amount from the ministère de l'Éducation. In addition, the citizen would not have to pay accrued penalties and interest.

The Department has taken steps to prevent this from happening again.[7]

3.1.6.1.5.1.2 GUILTY OF WHAT?

On January 1, 1995, a citizen decided to sell her retail business to her brother. In May 1995, she sent a letter to the Department, informing them that she was no longer operating this particular business. She also wrote to the Inspecteur général des institutions financières to ensure that the registration card bore the name of the new owner.

On June 13, 1995, the Department confirmed that her registration for provincial and federal taxes had been cancelled and that her registration in the summary of source deductions and employer contributions was also cancelled retroactively to January 1, 1995. The Inspecteur also made the required change, but only starting April 20, 1995. The citizen thus continued to be considered the administrator of the business until this later date.

In September 1999, the citizen received an assessment notice in the amount of $1,183.70 for undeclared source deductions and employer contributions for the 1995 fiscal year, which she contested. When the Department refused to cancel the assessment, she turned to the Québec Ombudsman for help.

The Department explained its position to the Québec Ombudsman stating that the "Cancellation Notice" sent to the citizen to confirm the cessation of her business did not provide sufficient evidence to amend the files. In addition, the Department checked with the Inspecteur général des institutions financières individual business registry in which the citizen's name appeared as the administrator of the business in question until April 20, 1995. Based on this, the citizen was responsible for paying source deductions and employer contributions for the period between January 1 and April 19, 1995. Unconvinced by these explanations, the Québec Ombudsman continued to question whether or not the assessment for the 1995 fiscal year was well founded.

After further discussion, the Department agreed that the Québec Ombudsman was right. Why should a citizen have to suffer the consequences of mistakes made by the Department and the Inspecteur? The ministère du Revenu agreed to review its decision and cancelled the assessment.[8]

3.1.6.1.6 MULTIPLE PLAYERS

The Régie des rentes administers the compulsory public pension plan for Québec workers. The Régie pays out pensions and benefits to citizens, most notably in the form of retirement pensions, surviving spouse's pensions and disability pensions.

Self-employed workers whose income exceeds the $3,500 basic annual exemption must contribute to the Québec Pension Plan. In the case of employees, half of the contribution is paid for by their employers. The Department is responsible for collecting employer contributions and remitting them to the Régie on a monthly basis.

8. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
      3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
      3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.1.6.1.6.1 THE WRONG BOX

Following the death of her husband, a citizen filed a request with the Régie for death benefits and the surviving spouse's pension. The Régie refused because the deceased had not contributed enough to the Québec Pension Plan during his "contributory" period. Upon verification, the Régie informed the citizen that her husband had not contributed to the Québec Pension Plan in 1993.

The citizen, however, was convinced that her self-employed husband had contributed to the QPP for this particular year. She attempted to have the tax return corrected but the Department refused, stating that the maximum 5-year deadline for making changes to a contribution, as provided for in *An Act respecting the Québec Pension Plan*,[9] had expired.

The investigation undertaken by the Québec Ombudsman confirmed that the citizen was right. Her husband had simply entered his income as a self-employed worker in the wrong box on the form.

At the Québec Ombudsman's request, the Department made the required correction and the citizen was granted the benefits to which she was entitled.[10]

9. *An Act respecting the Québec Pension Plan*, R.S.Q., c. R-9.
10. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
    7. *Respecting Personal Dignity*
    7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.
11. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.1 Abide by special statutes and regulations as well as regular legislation.

3.1.6.1.6.2 MANY JOBS = MANY PROBLEMS

In this case, a teacher held more than one job. For the past three years he had worked three hours per week, eight months of the year for an employer who paid him twice a year, but who did not remit employer contributions to the Québec Pension Plan or deduct the employee contribution from the teacher's salary.

The employer believed that he was not obligated to contribute to the QPP since the citizen's annual salary was less than the $3,500 personal annual exemption. The teacher therefore asked the Department to accept his own contribution and demanded that the employer pay his part for 1997 and 1998. The Department refused to comply.

Dissatisfied, the citizen challenged the Department's initial reply in September 1998. One year later, the Department rendered its decision: it would only accept the employee's contribution.

The Québec Ombudsman learned that the employer could not refuse to contribute to the Régie since the $3,500 personal annual exemption needed to be adjusted according to the number of months worked. Furthermore, under the terms of *An Act respecting the Québec Pension Plan*, every employer is obligated to make deductions, regardless of the deductions made by other employers for the same employee. In fact, an employee who holds several jobs often has an annual income lower than the personal exemption with each individual employer. This is a significant disadvantage for the employee since there are no employers contributing to the Québec Pension Plan in his name.[11]

The Department informed the Québec Ombudsman that the employer should have contributed to the Régie and admitted that its employer guide does not provide detailed information on how to calculate contributions for employees who have more than one employer. The Department therefore agreed to clarify the explanations provided in the guide.

3.1.6.1.6.3 SPLIT PERSONALITY?

For the 1997 fiscal year, a citizen produced his first income tax return. He received a refund from Revenu Canada but not from Québec.

Meanwhile, the ministère de la Solidarité sociale claimed $312 from the citizen for overpayment of social assistance benefits. Though the notice was made in the citizen's name, the social insurance number and municipality provided were incorrect. The notice also indicated Saint-Jean-sur-Richelieu as the place of residence when, in fact, the citizen was a resident of Montréal. His mother informed the ministère de la Solidarité sociale of the mistake and, once the correction was made, a new notice was sent. The citizen and his mother assumed that the income tax refund would be used to pay off the amount owed for the overpayment of social assistance benefits.

When the citizen filed a new request for social assistance benefits, he was told that his monthly benefit would be reduced by $56 due to the existing $312 debt. The citizen, however, believed that this debt had been paid off with his income tax refund. His mother checked with an agent at the Department but the latter could find neither her son's name or social insurance number in the files . . . and, unfortunately, the citizen had not kept a copy of his return. The citizen's mother asked the Québec Ombudsman for help in sorting out the whole mess.

The investigation revealed that the social insurance number appearing on the "Summary of Benefits and Compensation" and the address on file were, in fact, correct. However, it was a whole different story at the Department where the tax return filed by the citizen was nowhere to be found. The Québec Ombudsman then asked the Department to check if there was another person with the same name living in Saint-Jean-sur-Richelieu who had also received social assistance benefits.

Sure enough, a man with the same name had not only received social assistance benefits but had also incurred a debt with the ministère de la Solidarité sociale. The Department had mixed up the two taxpayers by attributing a social insurance number to the wrong file. As a result, the income tax return of the Montréal citizen ended up in the file of the Saint-Jean-sur-Richelieu citizen. The Department therefore assessed the Montréal citizen using the other man's social insurance number and the tax refund of the Montréal citizen was sent to the ministère de la Solidarité sociale to pay off the social assistance debt incurred by the Saint-Jean-sur-Richelieu citizen.

After countless clarifications, the Québec Ombudsman convinced the ministère du Revenu to explain the situation to the ministère de la Solidarité sociale. The latter was required to return the amount used to cover the Saint-Jean-sur-Richelieu man's debt to the Montréal citizen. As for the ministère du Revenu, it paid the interest accumulated since the date of the assessment notice.[12]

12. **The Social Contract**
7. Respecting Personal Dignity
7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

But, the story doesn't end there . . . shortly thereafter, the citizen informed the Québec Ombudsman that the ministère de la Solidarité sociale was still sending him account statements for the social assistance debt and, once again, was using the social insurance number and address of the Saint-Jean-sur-Richelieu resident.

The Québec Ombudsman intervened and the ministère de la Solidarité sociale finally made all of the necessary corrections.

3.1.6.1.7 BILL Nº 390

In March 2000, the Québec Ombudsman commented on Bill nº 390, presented to the National Assembly by the Beauce-Sud MNA in December 1999. This bill amends the provisions of *An Act respecting the Ministère du Revenu* in order to prevent the Minister from using the Department's powers of collection when a person issues a notice of opposition or appeals an assessment, and this, until a final decision is rendered on the main issue of the dispute. The Québec Ombudsman endorses this principle, and considers that the powers of collection granted to the Department create an imbalance of power between citizens and the State.

The Department's use of these powers could had serious, even irreparable repercussions on the financial situation of citizens and contravenes the principle of natural justice according to which every citizen has a right to "express their point of view."[13]

13. **The Social Contract**
    4. *Respecting the Rules of Natural Justice*
    4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
14. *An Act to facilitate the payment of support*, R.S.Q., c. P-2.2.
15. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

Following the intervention by the Québec Ombudsman — which joined in with many other groups including the Barreau du Québec and the Association de planification fiscale et financière in endorsing this cause — the ministère du Revenu announced the tabling of a bill for this purpose at the National Assembly on May 4, 2000.

3.1.6.2 SUPPORT PAYMENTS

3.1.6.2.1 SUPPORT PAYMENT COLLECTION

An Act to facilitate the payment of support,[14] which came into effect on December 1, 1995, introduced a universal collection system. In other words, those parties who have a support obligation under a judgement enforceable in Québec are required to fulfill this obligation. The ministère du Revenu — which collects support payments from debtors and remits them to the creditors — is responsible for enforcing this law.

This universal system for collecting support payments came into force six months earlier than expected. Due to a hastily-programmed computer system, a shortage of staff and a lack of training, this collection system experienced many problems from the start and, clearly, the repercussions of this hasty implementation are still being felt four years later.

During the 1999–2000 fiscal period, the Québec Ombudsman received 796 complaints. Of this number, 503 requests were subjected to a thorough investigation, which yielded a total of 208 justified complaints (reflecting a 41% rate of substantiated complaints).[15]

What specifically distinguishes the 1999–2000 fiscal period is how slowly the Department moved to make the required improvements: there are still no collection investigators, no computer link with the ministère de la Solidarité sociale; the question of advances remains to be settled; the computer system must be at least partly, if not fully, revamped.

Furthermore, in its desire to fulfill its mandate and appease creditors, the Department sometimes failed to show flexibility toward certain debtors, thereby subjecting them to significant prejudice.

3.1.6.2.2 CREDITOR COMPLAINTS

During the 1999–2000 fiscal year, the Québec Ombudsman did not receive any complaints regarding delays in assigning files. In June 1999, the Department had reached its objective in this regard[16] and has remained on course ever since.

3.1.6.2.2.1 DELAYS IN PROCESSING FILES WHEN THE DEBTOR LIVES OUTSIDE QUÉBEC

Nevertheless, one exception remains: more than four years after the implementation of *An Act to facilitate the payment of support*, there are still many "reciprocal enforcement" files which have not yet been assigned to an agent for processing. These files, governed by *An Act respecting reciprocal enforcement of maintenance orders*,[17] concern the collection of support payments when the debtor lives outside Québec. In such cases, it is the collector of other provinces — as well as certain U.S. states and France — that is mandated with collecting unpaid amounts which are then remitted to the Department; according to the latter, 290 reciprocal enforcement files are still waiting to be processed.

Even when these files are finally assigned, it may take nine to twelve months before support payments are actually collected. Even if the Department is reliant on outside jurisdictions, it is also an intermediary whose key role is to ensure that the foreign collector fulfills its mandate. Investigations undertaken by the Québec Ombudsman showed that several agents did not perform a follow-up on other collectors. Creditors must frequently take things into their own hands, at their own expense, and contact the authorities of the state or province in which the debtor ex-spouse resides.[18]

In January 2000, Department managers informed the Québec Ombudsman of their intention to implement a follow-up mechanism to expedite these cases. Obviously the Québec Ombudsman will keep a close eye on this issue.

3.1.6.2.2.2 DELAYS FOR COLLECTION FILES

There are also increasingly long waiting periods for the processing of creditors' complaints concerning collection files.

When collection measures undertaken by the Direction de la perception des pensions alimentaires [support payment collection

16. Between the delivery of the judgement and the first payment made to the creditor, the objective was one month for new support orders and two months for files open following a creditor's declaration of the debtor's failure to pay.
17. *An Act respecting reciprocal enforcement of maintenance orders*, R.S.Q., c. E-19.
18. **The Social Contract**
    8. *Doing the Utmost to Act Responsibly*
    8.6 Provide services and information, and convey decisions, within a reasonable length of time.
    8.7 Continuously seek to shorten waiting times.
    8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

department] are unfruitful, the file is sent to the Centre de perception fiscale for collection of unpaid amounts. The latter then begins an investigation in order to trace debtors and their assets. It then undertakes the administrative asset seizures enforceable under the terms of the law (salary, bank accounts, certificates of deposit, rent, etc.). With assistance from the legal department, the Centre's staff initiates the various types of legal recourse provided for in the *Code of Civil Procedure*.[19] It also negotiates repayment agreements with debtors.

Obviously, processing a collection file requires much more time than processing a file in which collection may take the form of a deduction at source. In fact, "collection" is, in most cases, synonymous with "uncooperative debtors" and the Department is then compelled to resort to a range of administrative or legal means. Nevertheless, creditors have the right to insist that the Department use all means necessary to collect arrears. Unfortunately, this is not the case.

To carry out its duties effectively, the Department must be allowed to question different witnesses. To do so, the Department must have staff members working on the road. Despite a pilot project that yielded excellent results, cutbacks forced the Centre de perception to abandon the project and dismantle its team.

It should be recalled that the ministère du Revenu is responsible for collecting support payments because of the intervention measures which this department has at its disposal. Yet although the Department has an independent auditing unit whose investigators are vested with the powers of investigating commissioners and although certain "support payment" files are entrusted to them, these files are not given priority.

In its special report in June 1998,[20] the Québec Ombudsman recommended that the Department give priority to support claims during the auditing process. The Deputy Minister agreed to this without hesitation but, as "support payment" files are not forwarded for auditing, it is clear that the problem persists.

In the same report, the Québec Ombudsman also recommended that the Department examine the possibility of setting up an auditing unit for the specific purpose of collecting support payment as provided for in Chapter VI of *An Act to facilitate the payment of support*.[21] The Department has yet to carry out this recommendation.

The Québec Ombudsman therefore considers that, in this particular area, the Department does not abide by results-based management.

3.1.6.2.3 A LACK OF HARMONIZATION WITH THE MINISTÈRE DE LA SOLIDARITÉ SOCIALE

A lack of coordination in the exchange of information between the ministère du Revenu and the ministère de la Solidarité sociale continues to cause problems for creditors

19. *Code of Civil Procedure*, R.S.Q., c. C-25.
20. LE PROTECTEUR DU CITOYEN, *Problèmes d'application de la Loi facilitant le paiement des pensions alimentaires*, Second Report, June 1998
21. **The Social Contract**
    5. *Serving Citizens*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
    5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

who are forced to obtain social assistance benefits because they are not receiving their support payments.

3.1.6.2.3.1 ENCOURAGING SOCIAL ASSISTANCE?

A citizen approached the Québec Ombudsman in May 1999. She had been receiving $425 a month in social assistance benefits and, approximately three months earlier, the amount had risen to $625 for no apparent reason. Intrigued, she called her agent and was informed that the surplus originated with the receipt of support payment arrears. Her ex-spouse confirmed that he was in fact paying $1,445 per month in support payments and back payments and that he had been doing so for the last two years! She objected that the ministère de la Solidarité sociale had not informed her of this sooner.

In fact, she could have stopped collecting social assistance benefits and had a monthly income of $665 — the amount of the current support payments — instead of $425. The investigation revealed that the ministère de la Solidarité sociale had not updated her file for two years. As a result of the Québec Ombudsman's intervention, she was able to stop collecting social assistance benefits and now receives her support payments. She also received a cheque in the amount of $1,290 for arrears owed to her.

Thus, for want of a computer link with the ministère de la Solidarité sociale, the ministère du Revenu had not been able to ascertain that the amount of social assistance benefits was lower than the amount of support payments. Had the Department been properly informed, it could have remitted the money directly to the creditor.[22]

In its special report on support payments published in June 1998, the Québec Ombudsman recommended that the two departments accelerate the implementation of a computer link. Since that time, they have held some meetings for the purpose of identifying their respective needs. A report was sent to the ministère du Revenu's Direction de la législation [legal department] which is currently analyzing the documents. Once the analysis is complete, the results will be submitted to the Commission d'accès à l'information for approval.

3.1.6.2.4 ADVANCES

During the previous fiscal period, the Québec Ombudsman had already looked into the issue of advances. Its 1998–1999[23] Annual Report states that:

"In accordance with section 36 of *An Act to facilitate the payment of support*, the Minister can pay out support payments in the name of the debtor for a maximum of three months, up to the sum of $1,500. Such payments constitute advances."

In theory at least, this provision is undeniably justifiable. The creditor should not be penalized for the administrative delays inherent in the collection procedure involving deductions at source (notice to the employer, delivery of amounts collected, cashing, etc.), hence the possibility of obtaining advances during this period.

22. **The Social Contract**
    5. *Serving Citizens*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
    5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
23. THE QUÉBEC OMBUDSMAN. *Annual Report 1998-1999*, p.110.

In practice, however, the granting of "advanced" sums, rather than providing relief for the creditor who is grappling with a tight budget, has actually increased his indebtedness. In theory, such are the circumstances in which advances are collectible from the debtor because they are payable in his name.

There is, however, an exception to this rule. When a judgement retroactively cancels the support payments and advances have been paid out during this period, the Department claims the amount of the advances from the creditor under section 33 of *An Act to facilitate the payment of support*."[24]

Here's the rub: no one knows about the existence of these advances, neither the judge, nor the lawyers, nor the debtor, nor the creditor who has always received cheques with a note that reads: "This amount is paid to you as support." As a result, the question of whether it is the debtor or the creditor who will reimburse the advances has never been brought before the courts. Following the judgement, the creditor learns with consternation that he owes the Department money.

The Québec Ombudsman has therefore recommended that the Department inform the parties of the existence of these advances and of the consequences of a retroactive cancellation of support payments.[25] In the absence of any action on the part of the Department, the Québec Ombudsman reiterated its recommendation on several occasions and finally learned that because of the way the computer system was programmed, it was often impossible to determine with any degree of accuracy the amount of advances granted for a given period!"[26]

Furthermore, the Québec Ombudsman discovered that during the 1999–2000 fiscal period, the Department had reimbursed itself for the amount of the advances directly from current support payments. In other words, it was granting itself priority for repayment.[27]

The Québec Ombudsman emphasized that a support payment's very essence is to provide for the current basic needs of the creditors, usually children. In June 1999, the Direction de la législation issued — at the request of the Québec Ombudsman — a legal opinion on this subject: the support payment must be paid out to the creditor first; any advances are to be reimbursed on the pro rata of arrears due to the creditor.

Despite the unequivocal position of the Department's legal representatives, it took four months for the authorities to react. Finally, on September 28, 1999, a guideline was sent to the agents. However, the situation has yet to be completely rectified since the system is still programmed to credit advances first. Agents must make the transactions manually if the support payments are to take precedence over advances.

24. Section 33: "Any creditor of support who receives from the Minister an amount to which he is not entitled shall reimburse that amount to the Minister".

25. **The Social Contract**
    1. ***Ensuring Government Transparency***
        1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
        1.2 Give citizens all the information they need in a timely manner.
        1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

26. **The Social Contract**
    5. ***Serving Citizens***
        5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
        5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency

27. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.1 Abide by special statutes and regulations as well as regular legislation.

3.1.6.2.4.1 A GREEDY DEPARTMENT

In April 1999, a mother asked for the Québec Ombudsman's help concerning a debt with the Department which she considered to be excessive. She unsuccessfully attempted to make arrangements to repay the debt. The Department, however, preferred to keep the money it received from the debtor, and as a result, it no longer handed over her support payments.

Here are the facts: a decree for divorce rendered on June 11, 1998 awarded the mother $1,034.27 in monthly support payments in favour of her three minor children and $200 in her favour. On November 20, 1998, the Superior Court confirmed a temporary agreement assessing the amount of arrears due in 1998 in favour of the children at $827.07 and anticipating a $342.06 monthly support payment starting January 1, 1999. The support payments in favour of the mother herself were cancelled as of July 18, 1998.

On the date the agreement was signed, the Department incurred a deficit of $2,078.50 due to overpayment to the creditor and because of amounts paid in advance in the debtor's name.

Initially the Department claimed the entire amount from the creditor. During this time, the support payments awarded for the children were used to repay the debt and the Department issued no payments to the mother.

Following a written complaint from the citizen, the department manager asked for a legal opinion on the amount of the claim. The Direction de la législation was of the opinion that the debtor be obligated to reimburse $1,000 (the advances) and that the creditor be obligated to reimburse $1,078 (the overpayment). The question of reimbursing the debt using support payments was not even raised.

At the request of the Québec Ombudsman, the Direction de la législation informed the managers that their practice of reimbursing advances did not respect the underlying principles of the law and that the repayment mechanisms could not apply in the case of support payments.[28]

As a result of this intervention, $1,368.24 was paid out to the mother for the months during which she did not receive her support payments.

3.1.6.2.5 DEBTOR COMPLAINTS

Even though the law aims to promote the regularity and stability of support payments, the Department should not forget that it is only an intermediary and that it must respect the rights of all parties when exercising its power.

Many debtors turn to the Québec Ombudsman and object to the Department's excessive rigidity because the repayment "agreements" do not take their ability to pay into consideration. They also object to being compelled to provide proof of payment when, in fact, the Department itself is often able to carry out such verification. The following four cases illustrate the kind of problems

28. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
    5. ***Serving Citizens***
        5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

debtors experience in their dealings with the Department.

3.1.6.2.5.1 ABUSE OF POWER

A debtor turned to the Québec Ombudsman in February 2000 because the Department was undertaking to garnish his wages, leaving him almost no money to meet his needs. Incidentally, the debtor had provided a statement of income and expenses and had tried to come to an agreement through which he would pay $100 every two weeks: $65 for the support payments and $35 for arrears. The Department, however, insisted on a $234 payment.

The amount of the arrears was $6,000. The citizen explained that he had experienced numerous financial problems over the last few years: he had received unemployment insurance benefits, then social assistance benefits and, in the end, had been forced to declare personal bankruptcy. Since he had filed a request for the cancellation of arrears, for which a hearing was scheduled for June 12, he asked the Department to understand his situation. Furthermore, his ex-spouse would not be penalized by his proposed agreement since she was receiving social assistance benefits and the ministère de la Solidarité sociale was subrogated to her rights.

The Québec Ombudsman contacted the manager handling the case and provided the pertinent documents, but nothing was done. Following the chain of command, the Québec Ombudsman then contacted the director and asked her to exercise the discretionary power granted to her under the law.[29]

The head of the complaints office informed the Québec Ombudsman that the Department's decision was final. The decision was justified by the fact that the debtor had a job. Since the law grants the Minister discretionary power over "deductions at source", a wage earner is entitled to obtain such recourse. In addition, the fact that the citizen was employed was a future guarantee of payment. Yet the Department remained unwilling to compromise . . .

The Québec Ombudsman therefore asked the creditor — in this case, the ministère de la Solidarité sociale — for its opinion on the matter. The latter accepted the Québec Ombudsman's position and an agreement was reached: the amount deducted from the man's salary was lowered.[30]

3.1.6.2.5.2 ADMINISTRATIVE CONVENIENCE

In this case, a citizen owed $15,000 in arrears. He contested the terms of payment established by the Department which required the citizen's written authorization to deduct over 50% of his gross income at source. The Department informed the citizen that if he failed to provide written authorization, his file would be transferred to the Centre de perception fiscale and he would have to pay additional fees.

The Department based its decision on a memorandum of understanding entered into by the Direction de la perception and the Centre de perception fiscale in May 1999:

29. ***An Act to facilitate the payment of support***
Section 15: "The Minister shall determine the sum that may be deducted at source having regard to the support payments to be made, up to the portion that is seizable for support debts as determined pursuant to the second paragraph of article 553 of the Code of Civil Procedure (chapter C-25). Arrears in support payments and fees, if any, may be included in that sum, in such proportion as the Minister determines".

30. **The Social Contract**
7. *Respecting Personal Dignity*
7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

> Agree upon situations in which the agreement covers the totality of arrears and the security interest for a period of 12 months or less regardless of the amount of the debt while ensuring the regular payment of the present alimony. Exceptionally, the manager may authorize a complete agreement which does not meet these conditions.[31]

Even though the Centre may be better equipped to analyse the financial capability of debtors, the Department should not be making unreasonable or illegal decisions purely for bureaucratic expediency. In this particular case, the Department's request violated the *Code of Civil Procedure* which limits the garnishing of wages for a support debt to 50%.

As a result of the Québec Ombudsman's intervention, the Department finally acted in accordance with the law.[32]

3.1.6.2.5.3 ABUSIVE APPLICATION OF THE LAW

A citizen approached the Quebec Ombudsman in October 1999. He contested a decision rendered by the Department which obligated his employer to deduct 50% of his gross income as a result of a collocation (wage garnishing for more than one debt). Only in the case of a support debt can a percentage of income as high as 50% be garnished from a citizen's gross income. For most collocation files, the Department must claim the maximum from the garnishee to ensure that all of the creditors are honoured. Furthermore, a collocation does not automatically result in a 50% garnishment of income.

The citizen owed $1,200 to an ordinary creditor and $16.42 per week to a support creditor. Since the support payment was very small, almost all of the garnished money was used to reimburse the civil debt.

As a result of the Québec Ombudsman's efforts, the percentage of income garnished was reduced in accordance with the actual amount of the support payments. The Department agreed to set up guidelines to ensure that this does not recur and to ensure that the 50% rule is better understood.[33]

3.1.6.2.5.4 A PRO-CREDITOR STANCE

A citizen approached the Québec Ombudsman because he contested the arrears claimed by the Department ($4,779), which, in his opinion, only took his ex-spouse's perspective into consideration.

The Québec Ombudsman asked that the calculations be double checked and, as a result, the citizen only owed $400 in arrears. The Department had in fact neglected to hear the debtor's version of the events.[34]

31. Memorandum of understanding between the Direction generale de la capitale et des regions, the Direction principale de la perception des pensions alimentaires and the Centre de perception fiscale, May 7, 1999, section 5.2.
32. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.1 Abide by special statutes and regulations as well as regular legislation.
33. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
    7. *Respecting Personal Dignity*
    7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.
34. **The Social Contract**
    4. *Respecting the Rules of Natural Justice*
    4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

In October, the citizen again sought the Québec Ombudsman's help when the Department refused to accept a receipt issued by the ministère de la Justice, dated July 1996 as proof of payment because there was no indication of this payment in the records.

The Québec Ombudsman pointed out that, since April 1996, the ministère de la Justice no longer acted to collect payments and that its records had become obsolete in May 1996. Unaware that his file had been transferred to the ministère du Revenu, the debtor continued to make his payments at the court house.

The Department finally accepted the receipt but refused to reduce the citizen's arrears until the creditor confirmed that she had received the money.[35] The Québec Ombudsman stressed the fact that the debtor made the payment and was not required to obtain confirmation from his ex-spouse. The situation was finally settled to the debtor's satisfaction.

35. **The Social Contract**
7. *Respecting Personal Dignity*
7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

3.1.7

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

"The Ministère de la Santé et des Services sociaux determines the main priorities, objectives and guidelines pertaining to health and social services and ensures their proper application. In addition, its role centres mainly around the following issues: national health and well-being objectives; overall policies; the equitable allocation of resources among the different regions and the efficient use of these resources.

More precisely, the Department's role is to establish policies pertaining to health and social services; to ensure that these policies are implemented, applied and evaluated; to approve regional priorities and regional service organizational plans; to equitably allocate human, material and financial resources among the different regions; to coordinate teaching and research; to develop the framework for human, material and financial resources; to establish the network's policies and labour adjustment programs; to ensure inter-regional coordination of services; to ensure the coordination of public health programs and take measures to ensure the protection of public health; to establish policies pertaining to overall procurement of goods and services by the various facilities."[1]

3.1.7.1 COMPLAINTS

	Individuals	Establishments
1999-2000	73	10
1998-1999	88	5
1997-1998	63	5
1996-1997	51	4

3.1.7.1.1 REQUESTS FOR INTERVENTION BEYOND JURISDICTION

The Québec Ombudsman received 1,123 complaints that are beyond its jurisdiction with respect to the health and social services network, compared with 808 for 1998–1999, that is an increase of 315, which is considerable. As the Québec Ombudsman has often deplored, it cannot investigate the actions, the mission and the decisions of the network's establishments, since the government decided to place the Commissaire aux plaintes in charge of the complaints, rather than an independent, impartial agency. These complaints mainly concern the Direction de la protection de la jeunesse (276) and hospitals (247).

1. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX. *Mission*, [www.msss.gouv.qc.ca], 2000.

3.1.7

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1. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Mission* [www.msss.gouv.qc.ca], 2000.

3.1.7.1.2 THE NATURE OF THE COMPLAINTS

The nature of the complaints mainly concerns access to services.[2] The establishments state that they do not have the resources necessary to fulfill their mandate. The citizens complain of the violation of their rights and that they must defend them before a colossal, multi-tiered machine with several players, with complex law and regulations. Recourse to the courts is often the only way to seek redress for grave prejudices, but this option proves hardly useful since few citizens have the means to resort to such a solution.

3.1.7.2 THE QUÉBEC OMBUDSMAN'S PUBLIC INTERVENTIONS

The Québec Ombudsman initiates discussion or participates in amendments to laws, regulations and policies.

It participated in the "Journées annuelles" on public health, the first step toward the development of a new law on public health. It also produced a brief before the Commission des droits de la personne et des droits de la jeunesse, on the exploitation of elderly persons[3] and formulated recommendations to prevent their exploitation and to ensure that persons in the process of losing their autonomy receive the services and the care that they require, and this, whether they reside at home, in a private nursing centre or in a public establishment.

The Québec Ombudsman also asked the Department to make adjustments to the complaints-handling system more accessible to this client group and more effective in terms of the protection of human rights. In addition, the Québec Ombudsman considers that the Department must provide a better framework for the development of housing in the private sector by delivering an operating licence on the condition that the owner complies with *An Act respecting health services and social services*,[4] in terms of the services and the care required by the state of health of persons in the process of losing their autonomy.

3.1.7.3 SUICIDE AMONG YOUNG PEOPLE: AN ALARMING CHAMPIONSHIP

In April 1999, in the presence of the Minister for Health, Social Services and Youth Protection, the Québec Ombudsman, accompanied by the President of the Collège des médecins and the Executive Director of the Association des Centres jeunesse du Québec, made public a joint report on suicide among users of youth centres.[5] These young people accumulate numerous risk factors and show a suicide rate that is much higher than the already alarming rate observed throughout the entire population of young Quebecers.

Today, despite the efforts of several establishments, individuals and researchers, the suicide rate among youth ranks among the highest in the world and continues to rise; suicide in this age group is widely associated with psychiatric illness, often compounded by difficulties related to family, living conditions or stressful events.

2. See also the chapter 3.1.8, p. 94
3. LE PROTECTEUR DU CITOYEN. *Contrer l'exploitation par l'élimination des facteurs de risque*, février 2000.
4. *An Act respecting health services and social services*, R.S.Q., c. S-5.
5. ASSOCIATION DES CENTRES JEUNESSES, COLLÈGE DES MÉDECINS, LE PROTECTEUR DU CITOYEN. *Le suicide chez les usagers des centres jeunesses : il est urgent d'agir !*, avril 1999

The objective was to recommend tangible solutions to the major problems of compartmentalization and lack of concertation among the establishments and the professionals of the medical and social networks which would compromise access to the care and the services to which they are entitled and for which they have urgent need.

An interim assessment of the follow-ups made to the recommendations formulated in this report enable us to assert that the problem of suicide among young people has finally been acknowledged as one of the most serious issues of public health. As soon as the report was tabled, the Minister for Health, Social Services and Youth Protection announced an injection of public funds for suicide prevention, and demonstrated his intention to take the specific needs of youths living in youth centres into account in the application of the action strategy to counter suicide.

Youth centres and the Collège des médecins have undertaken to jointly formulate a protocol for intervention among young people living in youth centres and to oversee the development of training programs for detection and intervention among young people. Several research projects undertaken to improve knowledge of this phenomenon are in progress, and others have been set up with assistance from agencies supporting research and from the Department.

3.1.7.4 SOME MEANINGFUL CASES

3.1.7.4.1 LIFE IN JEOPARDY, FOR WANT OF A BUDGET?

Two citizens to whom the local community services centre (CLSC) refused financial compensation for the costs of transportation incurred to receive dialysis treatments at an establishment in another region approached the Québec Ombudsman. The CLSC had exhausted the allocated budget in the Programme Transport/Hébergement, through the regional board. Given the urgency, since these persons required three treatments and more per week and these treatments were vital, the Québec Ombudsman intervened; the CLSC and the regional board found the funds required to reimburse the expenses of these persons.[6]

The Québec Ombudsman undertook a global study of the assistance program and expects to refer the findings to the Department.

3.1.7.4.2 A QUESTION OF RESPECT FOR THE INDIVIDUAL

The Québec Ombudsman received complaints from parents about the lack of resources in rehabilitation centres for their autistic and dysphasic children.

The funds earmarked for services to the autistic are in the envelope for intellectual disability, which encompasses the set of budgets allocated to services provided to children and adults alike. The organization of services therefore varies

6. **The Social Contract**
   5. ***Serving Citizens***
      5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

among the regions depending on the allocated budget. It even happens that funds are allocated to other priorities.[7]

Moreover, during the investigation, the Québec Ombudsman noted that in the Québec City regional board, 75 young dysphasic children are awaiting treatments and the waiting period is 18 months. The Québec Ombudsman reported these serious problems to the Minister of Health and Social Services. It is awaiting a response.

3.1.7.4.3 NECESSARY PROTECTION

A student in a private school received training as a reception centre attendant. He wondered if the health establishment and the school had checked that the trainees on placement had been vaccinated or had undergone detection tests before the placements commenced, as is the practice in the public network.

The Québec Ombudsman considered the rapid development of homecare services in the private sector a phenomenon that followed from the Department's guidelines to facilitate maintaining persons in the process of losing autonomy in their homes for as long as possible. At that time he reported the matter to the Direction générale de la santé publique so as to examine the possibility of making care-providing staff in the private sector subject to the same regulations governing the public network.

The Direction générale de la santé publique agreed to this request by submitting the whole proposal to the working group that reviews the law in order that the law be amended to provide for the vaccination of care-providing staff in the private sector as in the public sector. The situation will be communicated as well to the joint committee of the departments of education and health and social services in order that private teaching establishments adopt the same practices as those of the public network.[8]

3.1.7.5 INTERNATIONAL ADOPTION: ARE THE ADOPTED PROTECTED?

The Québec Ombudsman received complaints from persons who had their private adoption project rejected by the Secrétariat à l'adoption internationale. They claimed to be victims of bad faith on the part of the Secrétariat, which, in some cases, rejected private adoption projects, and in other cases, authorized them under specific conditions that are not stipulated anywhere; they also denounced the agency's lack of transparency.

The Secrétariat explained that in the name of children's best interests, it was participating in controlling the traffic of children; also, the parents that do not fulfill certain standards must act through the intermediary of agencies recognized by the Department.

While recognizing that the Secrétariat à l'adoption internationale must participate in the fight against the traffic of children, the Québec Ombudsman is of the opinion that the decision cannot be left to the judgement of advisors alone.

7. **The Social Contract**
   5. ***Serving Citizens***
   5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.
8. **The Social Contract**
   5. ***Serving Citizens***
   5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

He therefore requested the Secrétariat to demonstrate greater transparency and to adopt a clear policy on private adoption. The issue is under study and the Québec Ombudsman is monitoring its progress.[9]

3.1.7.6 CONTRIBUTION FOR THE ACCOMMODATED ADULT: A REVIEW IS CALLED FOR

In Québec, 55,000 adults are accommodated, including 48,000 who pay a contribution for their accommodation. The Régie de l'assurance maladie du Québec administers the contribution program.

The complaints addressed to the Québec Ombudsman concern the client groups subjected to the contribution, the services included in the contribution and the regulations establishing the contribution.

3.1.7.6.1 AN INJUSTICE

Citizens denounced to the Québec Ombudsman that they were charged for the expenses of their accommodation in hospitals, whereas they had been admitted on a court order following a verdict of non-responsibility on the grounds of mental illness.

The investigation revealed that persons kept in a health establishment after having been declared unfit to endure trial or having been acquitted as not criminally responsible on the grounds of mental illness were assimilated with other persons accommodated in a hospital, and were not considered to be inmates. This is the position adopted by the Department which was based on the interpretation manual of the Financial Contribution for Accommodated Adults program,[10] produced in 1993 by the ministère de la Main-d'œuvre, de la Sécurité du revenu and de la Formation professionnelle, and applied by the establishments of the health and social services network.

The Québec Ombudsman considered that this problem is abusive and unjust, and he asked that the charges for expenses be withdrawn; indeed, these persons, deprived of their freedom and held against their will, must pay a contribution for their accommodation,[11] whereas they would not have expenses to pay if they were incarcerated in a detention centre under the jurisdiction of the ministère de la Sécurité publique. He also recommended the review of the interpretation manual of the Financial Contribution for Accommodated Adults program so that it indicates that persons kept in hospital and subject to the jurisdiction of the Commission d'examen de troubles mentaux be considered inmates in legal terms and therefore be exempt from paying a contribution to accommodation.

A committee formed of interveners from the Régie and the Department was set up to study the regulation of contributions to accommodation. The Québec Ombudsman's intervention was submitted to the committee for study.

9. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.
10. MINISTÈRE DE LA MAIN-D'ŒUVRE, DE LA SÉCURITÉ DU REVENU ET DE LA FORMATION PROFESSIONNELLE. *Manuel d'interprétation du Programme de contribution des adultes hébergés*, code 1.159, date de révision 93-03-01.
11. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.2 Promote respect for basic rights and freedoms in each action that is taken.

The committee should also examine the following elements:

- Services included in the contribution: the persons accommodated still do not receive the services for which they pay. What is commonly called the "basket of services" varies from one establishment to the next depending on the availability of funds.

- The individual allocation: it is not always used for the personal needs of the person accommodated, but is accumulated to be used for acquiring collective goods, which the establishments should make available to the residents. Furthermore, the amount of the individual allocation is not annually indexed, whereas the rate required for accommodation constantly increases.

- The diversity of client groups: physical rehabilitation centres and rehabilitation centres for mothers in difficulty do not always require a contribution from users. The regulations vary among certain categories of persons who, although they are in the same situation, are on a temporary stay in a network establishment. Thus, persons admitted to a rehabilitation centre for alcoholics must pay a contribution after 45 days of accommodation, whereas those admitted to a physical rehabilitation centre are subjected to paying a contribution from the first day of accommodation.

- Inadequacy of exemptions: when the new *Act respecting health services and social services* came into force in 1992, the application regulation was not amended. The schedule of the *Règlement sur l'aide sociale*[12] of 1983 still applies to the exemptions in the establishment of the calculation of the contribution to accommodation. For example, the value of the household assets must not exceed $2,500 for a family, and $500 for an individual, an exemption of $40,000 is allotted for a house, $4,000 for a car. Today, these amounts must be revised.

- The contribution required and the method of calculation: the contribution is established according to the total net income before taxes of the beneficiary and that of his spouse, the value of his assets and his family responsibilities. That also includes the non-taxable remainder of any indemnity, annuity, pension or allowance. After each allowable deduction or exemption, 1% of the excess is added to the income. The total income is divided by four, or by two for a single person. This method of calculating this percentage means that many persons on low-income are not entitled to any exemption from the contribution.

- The status of persons: for the purposes of the application of the accommodation program, the *Act respecting health services and social services* does not recognize the status of a person living maritally or being separated from the accommodated adult. The accommodated adult must prove that he no longer has a relationship with the absent spouse for at least five years before being exempted from paying a higher contribution. On the other hand, the income of the de facto spouse is not taken into account in the calculation of the accommodation of the other spouse.

12. *Règlement sur l'aide sociale*, L.R.Q., c. A-16, r.1.

3.1.8

LE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

"The mission of the ministère de la Sécurité publique is to ensure a safe environment, essential to the full and complete exercise of individual rights and freedoms and conducive to the development of individuals and the community. This broad mandate hinges on three main areas of intervention: enforcing laws and regulations governing the life of the society within its jurisdiction; providing courts with relevant advice, applying their decisions against persons who break the law and promoting the social reintegration of offenders in both closed and open environments, in cooperation with community resources; ensuring the protection of persons and their livelihood in the event of major disasters or catastrophes."[1]

3.1.8.1 QUÉBEC CORRECTIONAL SERVICES

In January 1999, the Quebec Ombudsman released its special report concerning the situation in Quebec's prisons. This report included over 50 recommendations aimed at countering the dysfunctions and illegal acts which are committed in prisons to the detriment of inmates. These recommendations addressed such issues as the bodily security of inmates within the context of criminal gang wars in prison, preventing the violation of laws and rules, managing disciplinary measures which run counter to the rules of natural justice, difficulty inmates face in obtaining access to a physician for required care, drug abuse, suicide and mental health, idleness and the threat to the social reintegration of inmates.

3.1.8.2 APPROPRIATE CORRECTIVE MEASURES

Following the release of this report, the Department drew up an action plan to implement the outlined recommendations. Certain dysfunctions were addressed using appropriate corrective measures. As a result of these interventions, Correctional Services is now obligated to continue filling the medical prescriptions of individuals who are newly incarcerated or have been transferred from another facility.

To ensure better protection of inmates, members of criminal gangs have been isolated in smaller detention sectors. Following a new outbreak of violence in the summer of 1999 at the Montreal detention facility (Bordeaux), smaller detention units (Sector G) were opened up in September of the same year to house members of criminal gangs. This was the result of an important recommendation brought forth by the Quebec Ombudsman for the purpose of neutralizing the negative influence these gangs have on other inmates.

1. MINISTÈRE DE LA SÉCURITÉ PUBLIQUE. *Mission*, [www.secpub.gouv.qc.ca], 1999.

However, as a result of the decision of March 2000 to close another big sector in Bordeaux (Sector C) for financial reasons, members of criminal gangs can once again "recruit" inmates who they would have otherwise not had contact with. Clearly, Correctional Services lacks continuity in the implementation of a policy which showed much promise; what is worse, this department is nowhere near applying a policy aimed at providing results which are in the public interest.

Among the positive decisions made, Correctional Services agreed to set up a joint committee to examine the internal complaints handling system currently used in prisons. In addition, the Minister of Public Security gave in to the Québec Ombudsman's arguments by abandoning its plan to close four small detention centres; in reality, it was more pertinent to reduce the inmate capacity of centres which were already considered too big[2] since this is where dysfunctions and illegal acts are most often committed. Small and medium-sized centres are much easier to manage and, in general, more easily facilitate human exchanges with prison personnel.

3.1.8.3 IMPORTANT PROBLEMS REMAIN UNRESOLVED

Many problems remain unresolved. In January 1999, the Department's action plan had still failed to address financial recommendations or recommendations related to staff cuts. The Department also failed to address the idleness of inmates (absence of paid activities, schooling and recreation), the special issues pertaining to the detention of women, problems with the escort and supervision of inmates, the suicide rate (the highest rate in Canada), the prevalence of mental health problems and the violation of international standards. Nevertheless, many of these issues were taken into consideration in the document entitled: "Follow-up on the action plan to implement the Québec Ombudsman's recommendations" presented in May 2000.

Moreover, this action plan and its follow-up document either completely evaded or opposed certain recommendations. As regards intervention plans which, for each inmate, must be made no later than 30 days after admission, the action plan only reiterated general guidelines established for revising the assessment process. As far as overpopulation is concerned, the plan skirted the Québec Ombudsman's recommendation to occasionally use residential buildings as detention centres, within the confines of the law.

Also, as regards the practice of keeping inmates locked in their cells 23 hours a day — because no other means has yet been found to protect them from attacks by other inmates — the Department claims that it is a practice undertaken at the request of inmates. In reality, they are given no other options. Either they stay locked up 23 hours a day or they risk facing an inmate looking to "settle his accounts."

The fight against drug addiction, rather than being handled by Correctional Services, is increasingly being handed over

2. The international standards recommend that the number of inmates in a single detention centre be limited to 500: *Standard Minimum Rules for the Treatment of Prisoners*, section 63.3. The Montréal and Québec City facilities already exceed the recommended minimum.

to "outside resources."

Moreover, many practices violate international standards relating to the treatment of inmates, the Canadian and Québec charters of human rights and freedoms as well as laws and regulations governing incarceration. These practices occur despite the fact that individuals deprived of their liberty are entitled to the same rights granted to all citizens, including the right to residual liberty, in other words whatever liberty they are entitled to in a detention centre. Residual liberty includes: the right to health care, the right to be treated with dignity, the right to freedom of expression, the right to work and study, and the right to privacy and visits.

3.1.8.4 CREATION OF AN QUÉBEC OMBUDSMAN/CORRECTIONAL SERVICES JOINT COMMITTEE

In January 1992, the complaints handling system was implemented in detention centres following a recommendation made by the Québec Ombudsman. It was created to ensure that complaints filed by inmates are treated fairly and rapidly by prison personnel. This system also aims at making both inmates and personnel more aware of their responsibilities; it is a means of making them accountable for their actions.

Eight years later, the system must be evaluated for several reasons: inmates' difficulty in securing a complaint form, failure to give a response within the prescribed deadlines, threats of reprisal, abuse of the system, the need to file a request in order to obtain a complaint form and the mechanism's loss of credibility.

The situation is especially problematic in large detention centres like Montréal, Québec City, Saint-Jérôme and Rivière-des-Prairies, but it seems to be improving in the majority of smaller detention centres.

The Québec Ombudsman's report recommended that a joint committee be formed with representatives from both the Québec Ombudsman's office and Correctional Services. Created in October 1999, the committee was mandated to report to the Minister of Public Security and the Québec Ombudsman in the fall of 2000 on how well the complaints handling system is functioning.

Using a questionnaire, the committee will press for consultation with inmates and the staff members who manage the system. Complaints filed in detention centres as well as those made to the Québec Ombudsman will be analyzed using a sampling method.

3.1.8.5 INCREASE IN THE NUMBER OF COMPLAINTS

In 1999–2000, the number of complaints was 3,681, a 24% increase when compared to the previous year. For the fifth consecutive year, complaints continue to rise; since 1995–1996, the increase is a marked 112%.

Again, the biggest increases are in large detention centres: an average of 35%. Among these increases, those of Québec City and Rivières-des-Prairies are the most significant (77% and 46% respectively). In Montréal-Bordeaux, the increase stands

at 28% while a slight 7% decrease is noted in Saint-Jérôme. In medium-sized centres, complaints have decreased by 13%; among small detention centres, an increase in complaints — from 45 to 94, for a 109% increase — was noted in Valleyfield.

There is also a significant increase in complaints in women's prisons. In Tanguay, the increase is 112% and, in the women's section of the Québec City detention centre it is 65%. A large proportion of these complaints are health-related: 43% in Tanguay, with 54% proving to be justified complaints; 42% for the women's section in Québec City. Yet if we compare these results to those of other similar centres including Sherbrooke where only 17% of complaints are health-related and Hull where the percentage stands at 16%, we realize that health services in detention centres are adequately provided by local community service centres (as is the case in Tanguay).

In 1999–2000, the rate of justified complaints stood at an average of 33%: large centres with 33%; medium-sized centres with 29%; small centres with 33%; women's centres with 30%. This is a slight increase when compared to previous years.

The issue of access to health care and the quality of the latter was, by far, the greatest source of dissatisfaction once again this year, representing 27% of complaints. Listed in order by percentage, they are: complaints relating to temporary absence, transfer of inmates, classification of inmates, loss of personal effects, discipline, living conditions and harassment by staff members. As far as the number of justified complaints are concerned, they are, by order of percentage: health (28%), temporary absences (7.4%), the complaints handling system (7.0%), transfers (6.1%), living conditions (6.0%) and discipline (5.3%).

Since publishing its report, the Québec Ombudsman has intervened on several occasions for violation of rights and the substantiated complaints recorded in this report. In fact, several complaints show that these same violations were often repeated. Whether it is in relation to disciplinary measures or abusive searches, violating the law pertaining to preventive administrative segregation, eligibility for temporary leaves, lack of psychological or psychiatric attention for suicidal persons, insufficient access to health care, or the complaints handling system itself, the number of substantiated complaints has not diminished.

3.1.8.6 EQUAL ACCESS TO HEALTH CARE IS NOT ALWAYS RESPECTED

The weakening health care system is affecting inmates even more than average citizens. When a person is deprived of his freedom, he cannot choose his own physician; it therefore becomes difficult to obtain adequate medical consultation even though charters and laws clearly state that every person has the same rights and enjoys the same privileges.

Several women incarcerated in Maison Tanguay addressed numerous complaints concerning the health services provided by the Ahuntsic CLSC through an agreement entered into

with the prison. An inmate from Hull — incarcerated in Montréal due to the lack of detention centres for women in Hull — was suffering from sharp pains in her leg but was never given the opportunity to consult a physician due to the excessive demand for medical consultation at the time. This occurred despite an agreement between the Department and the Ahuntsic CLSC, obligating the CLSC to provide in-prison medical service 15 hours a week. As it turns out, the CLSC was only providing in-prison medical service four to six hours a week. The result? The physician did not have time to see all the patients who required his services and the nursing staff was forced to select the inmates who would be given the opportunity to consult the doctor.

Though the woman turned to the Québec Ombudsman for help, the latter is not permitted to assist inmates in securing faster access to medical consultation. The nursing staff claimed that the inmate's leg was not swollen, and yet, the pain was actually so severe that, only a day later, the night guards were forced to take her to the hospital. The hospital physician acknowledged that the inmate's leg was in fact swollen and prescribed medication to help relieve the pain.

As for the healthcare problems in the Tanguay prison, the Québec Ombudsman asked to meet with the concerned authorities from Correctional Services and the Ahuntsic CLSC in order to have the agreement on the hours of medical presence respected.

The Assistant Director of Correctional Services in the Montréal region agreed to take care of the problem. As for the Ahuntsic CLSC, it explained that few physicians are willing to work at the prison. Thus, inmates in Tanguay prison must not only renounce their right to choose a physician, they must also renounce their right to medical consultation. This is a violation of the protection provided for in the *Charter of Human Rights and Freedoms.*[3]

Deeming this situation to be unacceptable, the Québec Ombudsman plans to pursue its interventions until the right to medical consultation is respected for persons who are incarcerated.[4]

3.1.8.7 VIOLATION OF THE RULES OF NATURAL JUSTICE

All persons, whether or not they are deprived of their freedom, have the right to legal counsel when accused of having committed a disciplinary offence. Canadian courts have tried many prison discipline cases and established that, in administrative matters as in criminal matters, any accused person has the right to a fair judgement based on legal procedures which abide by the rules of natural justice: the right to be informed of the charges laid, the right to examine and cross-examine witnesses, the right to be represented by the person of one's choice and the right not to be punished for the same offence twice.

The procedure in matters of prison discipline is much more lax than the procedure before a court of law given

3. *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.
4. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
      3.2 Promote respect for basic rights and freedoms in each action that is taken.
   4. *Respecting the Rules of Natural Justice*
      4.5 Avoid all forms of discrimination or unequal treatment.

that administrative authorities have discretionary power. Due to this, however, the Québec Ombudsman still receives complaints concerning the abuse of power by prison authorities.

3.1.8.7.1 THE RIGHT TO LEGAL REPRESENTATION

An inmate from the Montréal detention facility (Bordeaux), risking punishment which would result in a longer sentence, was refused his right to legal representation by the Disciplinary Committee. In fact, not only was he ordered to be segregated (commonly referred to as serving time in the "hole"), he also lost the thirty days that had been reduced from his sentence because of two reports against him for disciplinary offences. As a result, the inmate would suffer longer from the deprivation of freedom to which he had been sentenced.

In this type of situation, Correctional Services generally only grants an inmate the right to legal representation when they foresee that the inmate is likely to lose considerable "time off" (accumulated sentence reduction days). In Montréal, "considerable time off" is a minimum of five lost days. Therefore, the detention centre in question — which is part of the Montréal region — did not follow the prescribed course of action. What is worse, the attitude of Correctional Services abusively limits the scope of what is considered residual freedom.

In fact, residual freedom is lost when an inmate's incarceration conditions are negatively impacted. Therefore, the decision to punish a person by confining them to their cell, segregating them, or even the decision to transfer an inmate to more difficult detention sectors is a decision which affects an inmate's residual freedom. In all cases, the rules of natural justice must be respected by Correctional Services, most notably by respecting an inmate's right to legal representation.

As a result of the Québec Ombudsman's intervention, the decision was reviewed and the severity of the disciplinary sanction was reduced. The Québec Ombudsman continues, however, to work towards full recognition of the right to legal representation by Correctional Services.[5]

The Québec Ombudsman is considering the possibility of monetary compensation for inmates having suffered this type of severe violation.

3.1.8.7.2 PUNISHED FOR BEING PUNISHED

An inmate lost control during a phone conversation with a relative, striking blows to the wall and ripping out the telephone wires. He was immediately placed in segregation for 20 hours after which he was incarcerated in a different sector which grants significantly fewer advantages to its inmates. He waited four days in this sector before appearing before the Disciplinary Committee. The committee punished him for the offence by reducing his "time off" by six days.

In addition to this punishment, the Classification Committee decided to keep him in a sector with a more restrictive

5. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.1 Abide by special statutes and regulations as well as regular legislation.
      3.2 Promote respect for basic rights and freedoms in each action that is taken.

regimen due to his lack of discipline. Clearly, this is a case of double punishment.

In fact, the law and the regulation state that the loss of freedom and the punishments decreed by the Disciplinary Committee are to be the only constraints imposed upon an inmate. This decision, however, clearly resulted in additional punishment, further penalizing the inmate and thus infringing upon his residual freedom.[6]

The Québec Ombudsman is considering the possibility of having the authorities pay for damages in this type of situation as well.

3.1.8.7.3 ABUSIVE USE OF RESTRAINT MEASURES

The Québec City detention centre uses restraint measures which drastically restrict the freedom of certain inmates.

As such, when inmates of a certain maximum security sector exhibit behaviour which is considered non-compliant or use offensive language, Correctional Services agents are authorized to make recommendations to the Direction des services à la clientèle [client services department] which can in turn order that the inmate wear handcuffs anytime he is outside of his cell — whether inside or outside of the prison — or it can order that cuffs be worn on both hands and feet and that a chain hold these separate cuffs together. The Québec City detention centre is the only provincial prison to use such drastic restraint measures.

3.1.8.7.4 WHEN DOES IT END?

While the inmate suffered disciplinary punishment, restraint measures were imposed on him. Fifteen days later, the inmate was still in the same situation and his case had not been re-evaluated.[7] As a result of the Québec Ombudsman's intervention, the pertinence of the restraint measures was evaluated.

3.1.8.7.5 DANGEROUS IN QUÉBEC CITY, HARMLESS IN MONTRÉAL

An inmate who was subjected to restraint measures during his stay at the Québec City detention centre, was transferred to Montréal (Bordeaux) where no special measures were applied and no problems arose. When he returned to the Québec City detention centre two weeks later, the previous restraint measures were applied once again.

This situation demonstrates the discrepancy that results when such measures are applied but not monitored. The Québec Ombudsman convinced the detention centre's management to perform a weekly follow-up on inmates who are subjected to these types of restraint measures. However, the Québec Ombudsman feels this is not sufficient. First of all, automatically applying these measures is abusive and inappropriate. Furthermore, extreme cases requiring the use of

6. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
   3.2 Promote respect for basic rights and freedoms in each action that is taken.
7. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

such measures should be individually reassessed within a very short period of time.[8] The Québec Ombudsman plans to continue its intervention in this respect.

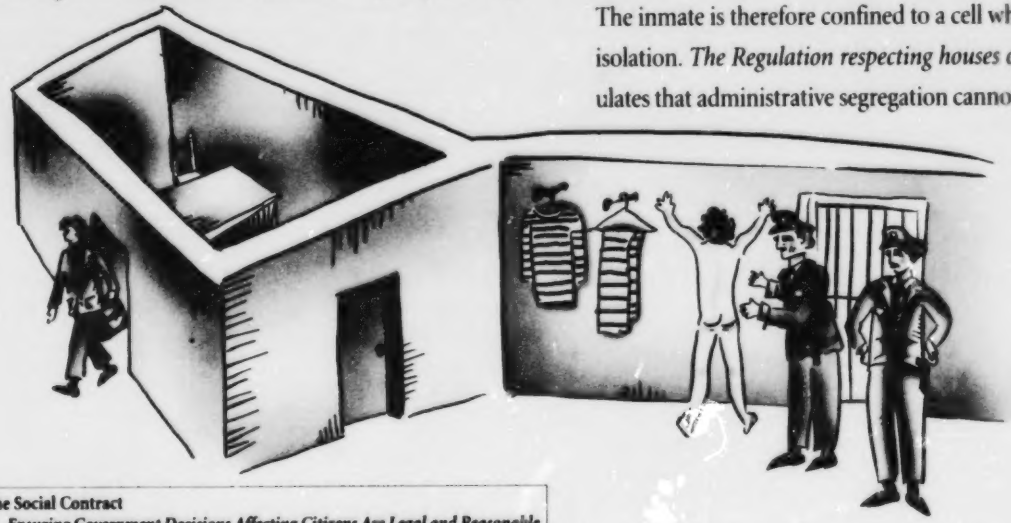
3.1.8.7.6 ABUSIVE AND SYSTEMATIC STRIP SEARCHES

At the Saint-Jérôme detention facility, strip searches are systematically performed each time an inmate meets with his lawyer in the visiting room. According to the authorities, this practice is used for security reasons and aims at preventing illegal objects from entering the facility, especially since visiting rooms are not under surveillance. The authorities cite their duty as security guards as justification for this practice.

According to the Québec Ombudsman, any strip search performed systematically, without any reason for suspicion or without any reasonable motive, is considered an abusive practice which violates the rights of inmates protected by section 24.1 of the *Charter of Human Rights and Freedoms* and by section 8 of the *Canadian Charter of Rights and Freedoms*.[9,10] The Québec Ombudsman is still working to eliminate this abusive practice.

3.1.8.8 VIOLATIONS OF THE LAW AND THE REGULATION

Any inmate who the authorities reasonably suspect is hiding prohibited substances in his body — most notably drugs, narcotics or medications which were not prescribed by a competent professional — is subject to administrative segregation. The inmate is therefore confined to a cell where he remains in isolation. *The Regulation respecting houses of detention*[11] stipulates that administrative segregation cannot exceed 72 hours.



8. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
      3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
      3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.
9. Ce.D, *The Canada Act 1982*, Schedule A.B., 1982, c. 11. (U.K.)
10. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
       3.2 Promote respect for basic rights and freedoms in each action that is taken.
11. *The Regulation respecting houses of detention*, R.R.Q., c. S-4.01, r.1.

3.1.8.8.1 VIOLATION OF A REGULATION ON ADMINISTRATIVE SEGREGATION

A person incarcerated at the Saint-Jérôme detention centre was kept in administrative segregation for over nine days.

During this time, he was not entitled to a shower, nor to his daily 1-hour walk, nor to a visit from his family members.[12] At the Québec Ombudsman's request, the facility's authorities took steps to rectify the situation and prevent it from happening again; the parties involved in this case held a meeting for the purpose of evaluating their administrative segregation practices and drawing up an action plan. In addition, there is now a new local training program on administrative segregation to help clarify the interpretation of the regulation's various sections, identify each person's responsibility and thus implement means of control.

3.1.8.8.2 CONFUSION BETWEEN A SUSPENDED SENTENCE AND VIOLATION OF THE LAW

A court which hands down a prison sentence less than 2 years in length can decide if this sentence is to be served in the community under certain conditions. This provides an alternative to incarceration. An inmate from the Roberval detention centre who had failed to respect the conditions of a respite of execution was forced to serve 18 months in prison. After having served a sixth of his sentence, the inmate requested a temporary leave for social reintegration. The facility's authorities refused this request based on a memorandum received from the Executive Director. The inmate therefore turned to the Québec Ombudsman who secured a copy of the memorandum:

> When a person is incarcerated as a result of his failure to respect the conditions of a respite of execution, this person is in no way eligible for a temporary leave until 1/3 of his sentence has been served. This decision stems from the Executive Director".

At the same time, *An Act respecting correctional services*[13] stipulates that a facility's director is permitted to authorize a temporary leave from the facility for the purpose of facilitating the inmate's social reintegration. The inmate is eligible for this temporary absence if he has served one-sixth of the imprisonment term handed down by the court. Therefore, this memorandum contravened the standards set for temporary leaves granted for the purpose of social reintegration and was depriving the inmate of his right to obtain a temporary leave for humanitarian or medical reasons before serving a third of his sentence.

As a result of the Québec Ombudsman's intervention, the temporary leave was granted. Furthermore, the memorandum was withdrawn and replaced by another memorandum which respected the legal provisions.[14]

12. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.1 Abide by special statutes and regulations as well as regular legislation.
    3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.
13. *An Act respecting correctional services*, R.S.Q., S-4.01.
14. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.1 Abide by special statutes and regulations as well as regular legislation.

3.1.8.8.3 DEGRADING ACTS AND THE STAFF'S FAILURE TO REACT

The Québec Ombudsman was informed by mail of two incidents involving the Saint-Jérôme detention facility. In the first case, the plaintiff wrote of an incident where two incarcerated persons forced an inmate to dance naked in the middle of the detention sector and of another case where the same individuals forced the same inmate to walk on all fours, completely naked, and engage in degrading acts using a cleaning tool. This inmate was also forced to sexually fondle another inmate in public. These events were said to result from a debt owed for the purchase of drugs.

The Québec Ombudsman's investigation revealed that the same letter had been sent to the Minister of Public Security and that verifications were being conducted in order to confirm or deny the alleged events. On the one hand, the inmate and three other incarcerated persons who were questioned all confirmed the facts. On the other hand, the staff members who met with the Sécurité publique did not contradict the allegations contained within the letter.

Given the severity of the events exposed,[15] the Québec Ombudsman recommended that Correctional Services carry out an administrative investigation in order to shed some light on these events and, if need be, identify the corrective action required to prevent a recurrence of such incidents. The administrative investigation was held and the exposed events were confirmed. As a result, recommendations were made by the investigation committee and will be applied by the authorities at the Saint-Jérôme detention facility.

One such recommendation states:

- " . . . that the facility's management review the manner in which surveillance is undertaken in Block F, specifically during the evening and on weekends; that the facility require increased vigilance in the form of more frequent patrols and greater involvement by staff members inside the sector, so as to observe the behaviour of individuals in the process of social reintegration.

- that the facility's administration ensure that operations managers are aware of and apply the local procedures and instructions (environment, description of position) and have these respected by their staff members.

- that communication tools be used to their full potential for following-up on client groups (log book, intervention reports, case history notes)".

3.1.8.8.4 CRIMINAL GANGS: THE FAMILY PHOTO ALBUM NEEDS TO BE UPDATED

An inmate who had been placed in a secure sector for three months asked to be transferred to an intermediate sector since he was not entitled to community visits in the secure sector.

The authorities refused because, based on information provided by Sûreté du Québec police officers, the inmate's picture was still included in a criminal gang's "family photo album." He tried to prove that he was no longer a member of this gang but prison authorities did not believe him.

15. **The Social Contract**
    7. *Respecting Personal Dignity*
    7.4 Do unto others as you would have them do unto you

He then communicated with Sûreté du Québec representatives and asked to have his picture removed from the infamous "family photo album." The Sûreté du Québec complied and informed the authorities at the detention centre. Nevertheless, the centre's director insisted on written confirmation in order to reconsider his decision. Days passed and the written confirmation was never received. The decision thus remained unchanged and the inmate continued to be deprived of his community visits.

The latter then turned to the Québec Ombudsman for help. Upon meeting with the chief investigator of the Sûreté du Québec's information services, the Québec Ombudsman learned that this "family photo album" had not been updated in years. For this reason the inmate's name was still included in the list. The Québec Ombudsman informed the chief investigator of how the inmate had been wronged and asked him to amend the list and send the required information to the detention centre's authorities.[16]

The chief investigator at the Sûreté du Québec agreed to update the list of criminal gang members in the following weeks. He also contacted the head of the detention centre to inform him that the inmate was, in fact, no longer part of a criminal gang. The facility's authorities finally complied by transferring the inmate who then became eligible for a community visit.

16. **The Social Contract**
8. *Doing the Utmost to Act Responsibly*
8.6 Provide services and information, and convey decisions, within a reasonable length of time.

17. *Firearms Act*, chapter 39, R.S.C. 1995

3.1.8.9 THE NEW *FIREARMS ACT*[17]

The application of the new Firearms Act resulted in approximately 65 complaints being filed with the Québec Ombudsman. This law obligates citizens to register their firearms before 2003. It also obligates them to obtain a firearm possession-only licence before 2001, and a firearm possession and acquisition licence, if required.

Historically, each province administered the *Firearms Act*. The management of this new law, however, required negotiations between the Federal government and the provinces. Provinces that wished to do so could continue to manage part of the issuing of firearm possession and acquisition licences. As such, the Chief Firearms Officer of the Sûreté du Québec handles requests for Québec citizens.

Those who asked the Québec Ombudsman to intervene complained of the waiting period for obtaining registration or a firearm possession and acquisition licence. Almost all of the claimants complained of the difficulty in securing information on the processing of their applications.

The *Firearms Act* states that a minimum 28-day waiting period is required to obtain a firearm possession and acquisition licence, but it does not specify exactly how much time it takes for a permit to be delivered. Currently, the wait is over six months. The Québec Ombudsman is investigating the Chief Firearms Officer in order to determine what is

causing these delays and examine how the latter could improve the situation.

3.1.8.9.1 PATIENCE, PLEASE

In March 1999, a citizen requested a firearm possession and acquisition licence but the Sûreté du Québec only cashed his cheque in June 1999. The citizen phoned the Canadian Firearms Centre several times and, each time, was referred to the Sûreté du Québec.

The citizen was told that his file was being processed, but was not given further information. In fact, he was not even provided with his file number.[18]

In March 1999, the Québec Ombudsman's investigation revealed that, even though a year had passed, the application still had not been processed.[19] On April 27, 2000, the citizen was still waiting for an answer from the Sûreté du Québec ...

18. **The Social Contract**
    1. ***Ensuring Government Transparency***
        1.2 Give citizens all the information they need in a timely manner.
        1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.
19. **The Social Contract**
    8. ***Doing the Utmost to Act Responsibly***
        8.4 Keep promises made to citizens.
        8.6 Provide services and information, and convey decisions, within a reasonable length of time.

3.1.9

MINISTÈRE DE LA SOLIDARITÉ SOCIALE

The ministère de la Solidarité sociale participates in the development of the workforce and employment, and fights poverty. To carry out this mandate, it provides financial assistance to persons whose financial resources are inadequate to provide for their needs and those of their families, and offers resources earmarked to promote the social integration of these people.

Over the course of the year 1999–2000, the Québec Ombudsman processed 4,018 consultations and complaints, and completed 1,818 investigations; of this number, 227 proved to be justified, for a 12% rate of substantiated complaints.[1]

Two units are in charge of administering the new employment public services network: Emploi-Québec, an autonomous service unit, responsible for administering most job assistance services and adapting job banks, and employment assistance, responsible for administering social assistance.

3.1.9.1 EMPLOI-QUÉBEC

3.1.9.1.1 A DIFFICULT START-UP

If the first year of Emploi-Québec only generated 128 complaints, the Québec Ombudsman received 420 from June to August 1999, for an average of 140 per month. These complaints mainly concerned Emploi-Québec's failure to respect agreements reached with training program recipients. The implantation of Emploi-Québec was indeed an undertaking of considerable scope. From the signing of the Canada-Québec agreement in principle on April 27, 1997, to the day set for its coming into force on April 1, 1998, the Department disposed of a period of approximately one year to prepare. On "D-Day," sufficient staff was in place, and most of the local employment centres were operational. Nevertheless, in June 1999, a crisis erupted.

Indeed, many citizens who had undertaken training programs enabling them to acquire the skills they needed to integrate into the job market were notified that their benefits would be suspended. Unable to complete their training, these citizens found themselves at square one, deprived of a means of earning a living.

In August 1999, the Department advised the Québec Ombudsman that 4,869 persons would not be authorized to

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

undertake a new training activity. The Québec Ombudsman pointed out that it would be unreasonable to deprive these citizens of their training allowance because they were in no way responsible for the budget situation of Emploi-Québec.

The Department reviewed its position and on August 18, 1999, the Minister announced that a sum of $40M had been allocated to Emploi-Québec to enable the agents at the local employment centres to respect the commitments they had undertaken.

The hasty implantation of Emploi-Québec, dubious planning and the lack of reliable data instigated a major crisis that required a brutal turnabout during the fiscal year 1999-2000. Faced with the scope of the problem, the Québec Ombudsman considered it appropriate to present a special report[2] in which he formulated a number of recommendations.

3.1.9.1.1.1 RECOMMANDATIONS FOR THE DEPARTMENT

- Take all the necessary measures to ensure that foul-ups are not perpetuated or new injustices created.
- Reconsider its decision to await the conclusion of judicial appeals lodged by citizens concerning the respect of agreements; instead the Department is urged to assume its responsibilities in this regard.
- Comply with the laws that govern it and no longer breach agreements resulting from the application of these laws; thus that it respect the primacy of the law.
- Accelerate the offloading of computer systems so that the operation is completed before the year 2003.

3.1.9.1.1.2 RECOMMANDATIONS FOR THE GOVERNMENT

- Learn a lesson from this reform and from other reforms mentioned by the Québec Ombudsman so that measures may be taken to prevent this sort of situation from recurring.
- Assess past errors and achievements in order to draw conclusions applicable to any new reform.
- Create an interdepartmental committee for the prevention of injustices during the adoption or implementation of reforms.
- That this committee specifically analyze any new reform project in order to reduce the risk of foul-ups and injustices, with an eye to making precise recommendations in this regard to the minister responsible, the head of the agency and the government, including the Conseil du trésor.
- That this committee consult the Auditor General and the Québec Ombudsman.
- That, moreover, the government comply with the sovereign will of the National Assembly and the MNAs who, in adopting legislation, can only presume that all the necessary means and resources have been taken into account so that this legislation can be implemented; the government can do so especially by ensuring that the necessary funds are available to cover operating expenses, including training, information and salary expenditures, as well as expenditures for benefits.

2. THE QUÉBEC OMBUDSMAN. EMPLOI-QUÉBEC. "*A Poorly Implemented Reform: Québec Citizens Pay the Price*", June 2000.

3.1.9.1.1.3 RECOMMANDATIONS TO THE NATIONAL ASSEMBLY

- That the MNAs, as lawmakers, be closely associated with the preparatory design and implementation phases of reforms in order to prevent foul-ups in their application.
- That MNAs be able to intervene, in the public interest, during the period preceding the adoption of legislation.
- That, to this end, MNAs be provided with the necessary mechanisms and tools in order to exercise a more complete and more functional supervision of the preparatory design and implementation phases of reforms.
- That grids and memoranda be drawn up, according to needs, in order for MNAs to have an influence over decisions preparatory to the implementation of reforms on the administrative level, and to have more complete information concerning the possible application of reforms.
- That these tools be designed so as to detect whether the principles of good management have been taken into account in decisions preparatory to the application of reforms.[3]

3. THE QUÉBEC OMBUDSMAN. 29th Annual Report 1998–1999 "*The Elected Representatives of the Year 2000: ProActive, Not Reactive Lawmakers*," pages 32 and 33.

4. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
   3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
   7. *Respecting Personal Dignity*
   7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

3.1.9.1.2 SOME SIGNIFICANT CASES

The Québec Ombudsman's negative report on the implantation of the new system is based on the injustices borne by citizens, for whom the Québec Ombudsman acts as the spokesperson. Once again, as all too often in the past, it is the citizens who pay the price.

3.1.9.1.2.1 FALSE SAVINGS?

A citizen, head of a single-parent family, recipient of employment insurance benefits, was chosen from among 4,000 persons to turn up for a selection examination to become a bus driver. She passed all the exams and the employer asked her to take special training that would ensure her a job. The employer confirmed the need for this training period of 38 hours at a cost of two thousand four hundred dollars ($2,400) with Emploi-Québec. The agent refused, because he considered the amount to be too high. Faced with this refusal, the citizen approached the Québec Ombudsman because she did not have such a sum and she risked losing the opportunity to get a job that would enable her to be independent. To save two thousand four hundred dollars, the Department would continue paying her a monthly benefit of $603 for months.

The Québec Ombudsman obtained payment for this course and the citizen, having succeeded, will soon have a job.[1]

3.1.9.1.2.2 CLIENT FORGOTTEN DURING A MOVE!

A citizen, enrolled in a secondary-school level course, was advised by the person in charge of the school that the registration

day care fees that the local employment centre must pay her on September 1 would not be paid until September 15, because it was moving to new offices. The citizen made further inquiries with her agent, who informed her that indeed the agents were busy with their move. He also informed her that once the new offices were in place, she would be paid her benefits, without, however, telling her whether or not this payment would cover the costs incurred during the first fifteen days of school attendance as had been the case the previous year.

Discouraged, the citizen approached the Québec Ombudsman, who intervened. The citizen, along with several other students, was able to arrange to have the fees paid retroactively.

3.1.9.1.2.3 FROM ONE EXTREME TO THE OTHER...

The coming into force on June 1, 1998 of the "supplément de retour au travail" measure enabled many employment insurance benefit recipients to obtain $500 when they found a job. This measure aims to compensate the expenses generated by a new job, such as transportation and day care costs, as well as clothing; these are costs that must be covered before the first paycheque arrives.

The success of this measure entailed expenditures on the order of $17M in 1998–1999. Faced with rising costs, Emploi-Québec amended the program's standards. Whereas recipients were formerly granted thirty days after starting a new job to submit the application for the supplement, as of September 1999, they had to apply before starting work. A "simple and fast" method of telephone registration for applications was supposed to fulfill this new requirement, but the system experienced foul-ups.

Thus, a citizen was convened on a Friday by an employer, and Saturday, she learned that she had gotten the job. She was to begin on Monday, and notified the Department agent on Tuesday. The agent called on her to come pick up the application form, which she completed and returned the same day. The agent's response: since the application had been submitted after she had started work, the citizen was no longer eligible for the supplement.

She approached the Québec Ombudsman who finally obtained that the thirty-day period be reinstated, and this for all citizens.[5]

3.1.9.2 EMPLOYMENT ASSISTANCE

The Department administers the employment-assistance program, which dispenses financial assistance to the most disadvantaged citizens.

3.1.9.2.1 ACCOMMODATED PERSONS EXCLUDED[6]

To receive assistance to cover their personal needs, citizens who are accommodated in long-term care hospitals or in home-care centres are subject to the same rules as other recipients of employment assistance. The regulation stipu-

5. **The Social Contract**
   5. ***Serving Citizens***
      5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
      5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
6. See chapter 3.2.5, p.131

lates that an adult with severe constraints is entitled to possess assets of $2,500 before the assistance is suspended. Beyond this amount, the assistance is not paid until the total amount has been spent.

This standard therefore compels the most disadvantaged citizens to part with their meager savings that might be needed to cover unexpected expenses.

The investigation revealed that this standard is applied to 150 persons annually. The Québec Ombudsman secured an amendment to the regulation. Henceforth, accommodated persons can, under certain conditions, keep an amount of $2,500 without having to spend it all in order to receive their monthly benefits.[7]

3.1.9.2.1.1 LOSS OF ACQUIRED RIGHTS

A citizen contested a claim requiring her to pay $410.16, challenging its merits. She filed a request for review but the decision was upheld.

The investigation revealed that this demand for payment resulted from the fact that she had received overpayment since she no longer benefited from additional amounts for children of under six months of age for whom she was responsible. This adjustment of $68.36 per month was being demanded of her from September 1998 to February 1999, for a total of $410.16.

It should be recalled that the temporary adjustment for a child born before September 1, 1997 and under the age of six years, had been introduced to prevent family incomes from falling because of the implantation of the family allowance plan. From September 1, 1997 to August 31, 1998, every family was entitled to the adjustment, and, as of September 1, 1998, to keep this amount, the family had to continue receiving a social assistance benefit without interruption.

Now, in this case, the ministère du Revenu, subrogated to the rights of the ministère de la Solidarité sociale, had collected six months of the support payments from the debtor and had remitted this amount to this Department. The investigation revealed that the ministère de la Solidarité sociale considered that if she had received her support payments, the citizen would no longer have been eligible for social assistance for six months. Since the woman had "fictiously" drawn social assistance benefits from September 1998 to February 1999, she had lost her rights for this period.

The Québec Ombudsman considered that this demand for repayment was unreasonable, although logical.[8] It therefore obtained a cancellation of the debt and it also asked the Department's Direction des politiques et programmes to correct such adverse effects.

The Department finally upheld the citizen's rights, and this, retroactively from June 1998. In addition, the Department took measures so that all persons who experienced the same

7. **The Social Contract**
   7. ***Respecting Personal Dignity***
   7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

8. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
   3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
   5. ***Serving Citizens***
   5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
   5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

situation would see their rights restored.

3.1.9.2.2 ABOLITION OF THE PENALTY FOR SHARING ACCOMMODATION

Following its report on the negative impact of the reduction for sharing living quarters on employment-assistance recipients, since 1995, the Québec Ombudsman has requested the abolition, or at least the reduction of this penalty applied to persons who decide to pool their meager resources and thereby attempt to improve their living conditions.

In 1998, the penalty of $100 was abolished for single-parent families. In July 1999, the Québec Ombudsman addressed comments to the Minister on the draft regulation Règlement sur le soutien du revenu[9]. He reiterated his demand for the benefit of all categories of recipients.

The government, on the occasion of the Summit on Youth, finally announced the reduction of the penalty to $50 as of June 2000; it will be entirely abolished later. This measure will help sixty-five thousand households.

The Québec Ombudsman continues to monitor this affair to ensure that the most disadvantaged persons can reclaim their due. They should be among the first to benefit from the surpluses generated by the growth of the economy.[10]

9. As published in the *Gazette officielle du Québec* on May 26, 1999.
10. **The Social Contract**
    5. *Serving Citizens*
    5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

3.1.10

MINISTÈRE DES TRANSPORTS

The ministère des Transports is responsible for applying laws and regulations pertaining to transportation and the highway system. It can, among other things, conduct construction, repair and maintenance work on Québec's roads. In addition, the ministère des Transports acknowledges that it is partly responsible for the noise generated by highway traffic and, as such, it adopts measures to reduce road noise.

3.1.10.1 THE QUÉBEC OMBUDSMAN'S MEDIATING ACTION

The Québec Ombudsman's intervention with the Québec government's various departments and agencies can take different forms, including mediation, which often results in the reconciliation of differences between citizens and the ministère des Transports.

3.1.10.1.1 PROMOTING WELL-BEING OVER BUREAUCRATIC EXPEDIENCY

In 1988, a citizen bought a beautiful house on a captivating site. His dream, however, quickly turned into a nightmare when the Department extended Highway 20 towards his house. Now located very close to the highway, the road noise was intolerable.

In April 1994, the citizen complained to the Department which decided that nothing could be done. Given the Department's decision, the citizen decided to plant some pine trees and build a very high fence. Unfortunately, his efforts were unsuccessful as the noise persisted.

In August 1996, the Department took some noise readings and found that the level of noise exceeded acceptable standards. Steps were taken to attenuate the noise but the effect was minimal.

In March 1999, civil servants offered to buy the citizen's house and, as such, the latter hired an appraiser to determine the value of his residence. The Department also conducted its own evaluation. In the end, the parties did not agree on the selling price: the Department had conducted its evaluation based on regulations for commercial property since the residence was no longer used for personal purposes. In fact, in a letter dated June 6, 1997, the owner stated the following: "We cannot imagine spending another summer in this environment. The level of noise has become unbearable. We have therefore acquired another residence for the duration of the proceedings and we intend to return to this residence when the matter is settled".

The citizen had therefore chosen a better quality of life. The Department was rather of the opinion that "the citizen had taken the law into his own hands by leaving his residence." He should have tolerated the situation and continued living in the house. In August 1999, all negotiations ceased.

At this point, the Québec Ombudsman intervened and suggested some possible ways to resolve the problem, including moving the residence to another lot. It also recommended that the Department come to a decision quickly and put forward a solution.

As a result of this mediation, the citizen and the Department, after five years of deadlock, finally came to an agreement which satisfied both parties: the purchase offer was increased by 50%.

3.1.10.1.2 BIGGER IS NOT ALWAYS BETTER

In 1995, a citizen purchased some land. Running right through his lot was a stream which, every spring, would flood the public road. In 1997, the Department finally decided to rectify this situation and, as such, sought to obtain authorization from the lot's owner before starting construction. Rather than contacting the current owner, the Department called upon the former owner who then forwarded the request to the current owner and obtained the latter's authorization. Construction work began in the fall of 1997.

It wasn't until the spring of 1998 that the citizen realized the magnitude of the work carried out by the Department. He was utterly dismayed: the stream, which was once 1 metre deep and 3 metres wide, had become 3 metres deep and 8 metres wide and extended over 800 metres. As a result of the corrective action taken, part of the citizen's property could only be accessed by the public road, and only if he built a culvert. What is more, building a wooden culvert was forbidden by a municipal by-law.

The citizen asked the Department to cover the cost of building a culvert but the latter refused, stating that the citizen should have negotiated these conditions before granting his authorization for construction.

The Québec Ombudsman noted that the Department had been satisfied with obtaining authorization from the former owner when it should have obtained authorization from the true owner after having explained the nature and magnitude of the work to be done. As a result of the Québec Ombudsman's intervention, an agreement was reached to the satisfaction of both parties.[1]

1. **The Social Contract**
   1. ***Ensuring Government Transparency***
      - 1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
      - 1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.
   5. ***Serving Citizens***
      - 5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

3.2

AGENCIES

3.2.1

COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

By virtue of *An Act respecting occupational health and safety*,[1] the Commission de la santé et de la sécurité du travail is mandated with the prevention and inspection of occupational health and safety as well as with the compensation of workers under protective re-assignment. It also handles the compensation and rehabilitation of workers who have suffered employment injuries, by virtue of *An Act respecting industrial accidents and occupational diseases*.[2] The Commission finances the plan directly through the compulsory contributions it collects from employers.

The Commission is also responsible for laws pertaining to occupational health and safety; it also administers the *Crime Victims Compensation Act*[3] for the benefit of victims of a criminal act who have suffered bodily or psychological injury as a result. In addition, it administers *An Act to promote good citizenship*[4] aimed at compensating persons who have been injured by coming to the aid of another who was in danger of his life or of bodily harm — these persons are obligated to act in this manner by virtue of the *Charter of Human Rights and Freedoms*.[5]

1. *An Act respecting occupational health and safety*, R.S.Q., c. S-2.1.
2. *An Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A-3.001.
3. *Crime Victims Compensation Act*, R.S.Q., c. I-6.
4. *An Act to promote good citizenship*, R.S.Q., c. C-20.
5. *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.
6. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

At 1,449, the number of complaints in 1999–2000 remained almost the same as the previous year. The rate of substantiated complaints[6] has not diminished with a rate of 43%, and this year the Commission ranks once again among those departments and agencies committing numerous injustices.

Employment-accident victims generally complained that the Commission refused to follow through on decisions rendered by higher authorities and refused to apply legal presumptions, or to provide citizens with complete information. This often resulted in citizens being refused eligibility and being subjected to unjustified delays.

In its last annual report, the Québec Ombudsman considered it essential that the Commission promptly assess its decision-review mechanisms. Unless the suggested solutions were adopted, the Commission would have to find other ways to avoid a backlog of 20,000 files waiting to be processed in December 1999. The Québec Ombudsman's prediction proved accurate and it expects to make new recommendations in the near future.

3.2.1.1 ABOVE THE LAW?

The Commission does not always act in accordance with the law. On more than one occasion, the Québec Ombudsman was compelled to intervene in order to have the Commission execute the decisions made by higher authorities.

3.2.1.1.1 UNJUSTIFIED REFUSAL

On March 15, 1999, the Commission des lésions professionnelles, which had launched an appeal, rendered a decision in favour of a worker. It acknowledged that on October 14, 1997 the worker -- who was 65 years old at the time — had suffered a relapse or deterioration as a result of his accident on October 14, 1986. He was therefore entitled to an income replacement indemnity from this date.

When the Commission refused to carry out the decision rendered by the Commission des lésions professionnelles, the worker turned to the Québec Ombudsman for help. Despite the latter's intervention, the Regional Office upheld its decision to refuse the indemnity.

The Québec Ombudsman therefore had to take up the problem with the Direction des relations avec les clientèles [client relations department]. The Direction was in agreement with the Québec Ombudsman and the Regional Office finally agreed to execute the decision rendered by the Commission des lésions professionnelles one year earlier; the worker received retroactive indemnity payments from the Commission.[7]

3.2.1.2 PRESUMPTION OF LAW

Presumption of law facilitates proving employment injuries. Section 28 of *An Act respecting industrial accidents and occupational diseases* states that an injury, which happens at the workplace, while the worker is at work, is presumed to be an employment injury. However, even if the conditions of the presumption are met, the Commission sometimes has a tendency to seek out elements to dismiss the presumption.

3.2.1.2.1 DO STANDARDS SERVE ANY PURPOSE?

A truck driver suffered an employment accident on May 13, 1998. Two days after the accident, he consulted his physician, who diagnosed him with a left inguinal hernia. The worker then advanced a claim to the Commission.

On November 4, 1998, the claim was refused and the citizen requested that the decision be reviewed. On June 3, 1999, the reviewing agent affirmed the Commission's position because the worker had apparently failed to demonstrate that the injury had occurred suddenly and unexpectedly.

According to the Québec Ombudsman, the conditions of the presumption had been met. The worker's story was not disproved and the inguinal hernia diagnosis was not called into question; furthermore, the accident occurred at the workplace while the worker was performing his work duties.

The reviewing agent had no reason to argue that the accident was not sudden and unexpected. The presumption aims specifically to dispense the injured person from the obligation of providing proof. The Québec Ombudsman therefore asked the Commission to resolve the matter through mediation in order to prevent any further delays. On November 25, 1999, a commissioner from the Commission des lésions professionnelles ratified an agreement recognizing the worker's employment injury.[8]

7. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
8. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation..

3.2.1.2.2 THE SEARCH FOR INFORMATION

A citizen advanced a claim for an occupational disease in February 1998. Four physicians had diagnosed this citizen with dermatitis of the hands which they claimed was the result of her job manufacturing laser ink cartridges.

The Commission refused the claim on January 8, 1999 because a physician from the agency deemed that since she wore gloves while working, she could not possibly have been in contact with the irritant substance.

However, the investigation revealed that the powders used in producing the cartridges are extremely volatile and can easily slip into gloves. This information, however crucial, did not appear in the worker's file. Furthermore, the Commission considered the allergy tests inaccurate, providing no further comment.

The Québec Ombudsman felt that the case required further investigation. It was unthinkable that the Commission failed to conduct allergy tests specific to the types of inks used and that it failed to seek more information on the nature of these types of inks before coming to a decision.

Additional testing established a link between the woman's employment and her diagnosis. In the end, the Commission finally accepted the citizen's claim.

3.2.1.3 INCOMPLETE FILES

The Québec Ombudsman learned that the Commission's claim files, both at the time of the initial request and at the time of review, do not always contain the information required to make an enlightened decision.

The Québec Ombudsman must often intervene to complete documentation of the files so that workers can secure respect for their rights.

3.2.1.4 FOR A RESPONSIBLE ADMINISTRATION

Decisions rendered by the Commission must comply with the law. Moreover, the public administration must meet the needs and expectations of citizens, and must act responsibly. When a worker seeks help from the Commission, he becomes a prisoner of administrative procedures.

3.2.1.4.1 HASTY AND UNJUSTIFIED SUSPENSION

A worker suffered an industrial accident on February 8, 1999. The attending physician diagnosed the worker with a chronic lower back sprain and authorized the latter to stop working. The Commission accepted the worker's claim and paid him an income replacement indemnity.

On June 21, 1999, the physician recommended that his patient return to work, given that the latter's condition had improved and that he no longer had any functional disability. As a result, the Commission stopped his indemnity payments.

The same day, the worker returned to his job and suffered so much pain that he was unable to work. He returned to see a physician who confirmed that the man was unable to work and who then referred the latter to his attending physician.

On August 31, 1999, the patient was recognized as having a permanent impairment and functional disabilities incompatible with his work. The Commission's expert, however, did not agree. As a result, the case was transferred to the Bureau d'évaluation médicale [medical assessment office], whereas the worker received no indemnities.

The investigation revealed that the Commission should have resumed payment of the indemnities to the worker starting June 21, 1999. In fact, section 128 of *An Act respecting industrial accidents and occupational diseases* states that the payment of a worker's income replacement indemnity must not be interrupted if, on the day he returns to work he is forced to abandon his work. In addition, since the Commission is bound by the opinion of the attending physician regarding the functional disabilities of the worker, it cannot cease to compensate the worker unless the Bureau d'évaluation médicale overrules this opinion.

The Commission accepted the Québec Ombudsman's position and made retroactive indemnity payments from June 21, 1999, and will continue to do so until the Bureau d'évaluation médicale emits an opinion on the functional disability of the worker and a decision is rendered on the man's ability to return to work.[9]

3.2.1.4.2 ONE DISEASE, SEVERAL PROVINCES

The Québec Ombudsman learned that the Commission does not adequately compensate victims of occupational diseases contracted in more than one province.

Most Canadian provinces and territories have adhered to the Entente interprovinciale pour l'indemnisation des travailleurs [Interjurisdictional Agreement on Workers' Compensation], which states that the agency which receives a claim that is eligible by law, must compensate the worker. Except for certain cases, this organization can address the agencies located in other provinces in which the worker was exposed during his employment in order to obtain a reimbursement equivalent to the amount of time the worker was exposed.

A worker — victim of an occupational disease recognized by the Commission — had a 3% impairment equivalent to a sum of

9. **The Social Contract**
3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
3.1 Abide by special statutes and regulations as well as regular legislation..

$1,391.80. The Commission only considered itself to be responsible for one quarter (28%) of the 3% impairment, the balance being attributable to the work done in another province. The worker therefore turned to the Québec Ombudsman for help.

The investigation revealed that the worker had been exposed to a contaminant in more than one province.

As a result of the Commission's decision, the worker was forced to call upon several provincial agencies even though the interprovincial agreement specifically aims to eliminate this type of bureaucratic unwieldiness.

As a result of the Québec Ombudsman's intervention, the Commission issued guidelines to all of the regional offices referring to this agreement. From now on, the indemnity will be paid for in full. The worker therefore received his $1,391.80 indemnity.[10]

3.2.1.5 REFUSING TO CORRECT ONE'S MISTAKES

Even if a mistake is the result of ignorance or inadvertence, the administration must rectify it.

3.2.1.5.1 SUBJECTED TO THE ADMINISTRATION'S MISTAKES

On April 3, 1999, the Commission inadvertently paid an accident victim $1,700 in income replacement indemnities. When the Commission became aware of its mistake, it asked the accident victim to reimburse the amount.

On November 26, 1999, the worker once again suffered an employment accident. He submitted a new claim to the Commission which, after several weeks, recognized the injury. The latter compensated the victim retroactively, from the date of the request, for a total of $2,000.

However, the worker only received $300 because the Commission decided to keep the $1,700 which he owed. The man — a father of five children — had not had any income since he had sustained his employment injury and couldn't provide for his needs with only $300. The Commission refused to make any arrangements with the worker.

The investigation revealed that the Commission's computer system automatically withheld the $1,700 which had been overpaid. The Québec Ombudsman pointed out that recovering a debt in its entirety contravened section 434 of *An Act respecting industrial accidents and occupational diseases*, according to which the Commission is not permitted to deduct more than 15% if the debtor has more than one dependent.

The Commission acknowledged its mistake and returned the $1,400 to the worker. The latter will reimburse his debt every two weeks by paying 15% of the indemnity[11] he receives.

3.2.1.6 UNJUSTIFIED DEMANDS

Public authorities are obligated to interpret the law in a reasonable manner; the reasons provided by citizens to explain

10. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

11. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

an impediment must be taken into consideration since it is presumed that they are acting in good faith.

3.2.1.6.1 VICTIM OF CIRCUMSTANCE

At the Québec Ombudsman's request, a worker was asked to visit her physician on January 19, 2000. However, due to the cold weather, she was unable to start her car. The worker tried in vain to get someone to drive her and then phoned the physician to tell him she could not make the appointment.

As a result, the agent informed her that her income replacement indemnities would be suspended, in accordance with section 142 of *An Act respecting industrial accidents and occupational diseases*, since she did not make her physician's appointment on time. In reality, the Commission can only suspend indemnity payments when an accident victim neglects or refuses to undergo a medical examination without a valid reason.

The worker therefore turned to the Québec Ombudsman for help. The latter pointed out to the Commission that section 142 of *An Act respecting industrial accidents and occupational diseases* does not permit the Commission to suspend the payment of an indemnity if the worker is unable to undergo a medical examination for reasons beyond his control. The Commission accepted the Québec Ombudsman's interpretation.[12]

12. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
13. **The Social Contract**
    8. ***Doing the Utmost to Act Responsibly***
        8.6 Provide services and information, and convey decisions, within a reasonable length of time.

3.2.1.7 PATIENCE, MOTHER OF ALL VIRTUES?

Unjustified delays will always be a source of worry and frustration for citizens. Such delays result in financial insecurity and distress.

Citizens are often confronted with delays when filing their initial request and upon administrative review of their case.

3.2.1.7.1 UNJUSTIFIED DELAYS

In May 1997, the Commission acknowledged that a worker had died as a result of an occupational disease. In June, the employer contested this decision. By virtue of section 361 of *An Act respecting industrial accidents and occupational diseases*, the worker's succession was not entitled to anything so long as the Commission's decision was in dispute.

Two years later, on May 13, 1999, the worker's heirs approached the Québec Ombudsman.

When the Québec Ombudsman investigated, it was informed that the file had been handed over to a reviewing agent the previous day. The agent had expected to grant the employer about 10 days to voice his opinion, and would then require an additional three to four weeks before rendering his decision. The employer withdrew.

The Québec Ombudsman considers this kind of delay to be a denial of justice. Had the Commission simply determined the employer's interest in the case, it could have quickly resolved the matter.[13]

3.2.1.7.2 VICTIM OF ADMINISTRATIVE RIGIDITY

In 1992, a student's mother died following a criminal act. By virtue of *An Act respecting industrial accidents and occupational diseases*, referred to in the *Crime Victims Compensation Act*, a child over 18 years of age who attends school full time, is considered a dependent until the age of 25. The basic requirement is that the student continue his studies full time without interruption for as long as he would have been considered a dependent, had his mother survived.

In May 1999, the Direction de l'indemnisation des victimes d'actes criminels [crime victims compensation department], which is under the jurisdiction of the Commission de la santé et de la sécurité du travail, stopped paying the student's indemnity since it had not received the form confirming that the student was attending school. Even if the student didn't remember receiving this form and urgently needed money, the agent informed her that the matter would have to be reviewed by the Accounting Department.

Desperate, the student turned to the Québec Ombudsman who argued that the Commission could not question the good faith of a student who claimed she had never received the form, especially since the Direction was in possession of the official document attesting to the fact that the student was in school. The Direction had to take the student's vulnerable status into consideration and quickly render its decision.[14] It did so.

14. **The Social Contract**
    4. *Respecting the Rules of Natural Justice*
    4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.
    7. *Respecting Personal Dignity*
    7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

3.2.2

COMMISSION DES NORMES DU TRAVAIL

The Commission des normes du travail oversees adherence to labour standards. Within this framework, the Commission:

- informs and provides information to the public on labour standards;
- monitors the application of these standards;
- receives complaints from employees and provides compensation pursuant to the law;
- ensures the conciliation of differences between employees and employers.

3.2.2.1.1 SERVING THE EMPLOYEE?

A citizen formulated a complaint to the Commission for unjustified dismissal in October 1997. One year later, in November 1998, the lawyer in charge of the case at the Commission informed the citizen that his complaint had been rejected.[1] The lawyer reproached the employee for not having formulated a new complaint in June 1998, conceivably the accurate date on which his employment was terminated. A complaint filed on this latter date would have in any case been rejected, for it would have been received beyond the deadline, that is to say more than 45 days after the termination date of the employment. The citizen was not aware of this guideline and wondered why the Commission had not informed him of it.

The investigation revealed that the citizen's complaint had been the subject of a mediation session in October 1997. The employee had then remitted to the mediator a document indicating that he still worked for his employer. This information is of crucial importance because the fact of occupying the same job entailed a refusal on the part of the Commission to represent the citizen before the labour commissioner.

Now, the mediator had forgotten to inform the citizen that his document had henceforth been classified as "confidential": everything that occurred during the mediation session must remain confidential in compliance with the *Act respecting labour standards*.[2] He could not, therefore, transmit his file to the Commission's Legal Department.[3] The citizen was supposed to take the document himself to the Legal Department but because of the mediator's silence, the citizen

1. **The Social Contract**
   8. ***Doing the Utmost to Act Responsibly***
   8.6 Provide services and information, and convey decisions, within a reasonable length of time.
2. *Act respecting labour standards*, R.S.Q., c. N-11.
3. **The Social Contract**
   1. ***Ensuring Government Transparency***
   1.2 Give citizens all the information they need in a timely manner.
   7. ***Respecting Personal Dignity***
   7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

was unaware that his document was still in the hands of the mediator and not in the possession of the Legal Department.

In November 1998, the Commission lawyer recommended to the citizen that he settle out of court with his ex-employer. Fortunately, the citizen had already satisfactorily negotiated an agreement with his ex-employer. The Commission's inaction could have had disastrous consequences for the citizen, in addition to making him lose his rights.

In order to prevent the recurrence of similar situations, the Québec Ombudsman asked the Commission to improve its procedures, particularly in the area of mediation.[4]

The Commission agreed to conduct a pilot project to specifically ensure the proper transmission of documents within the various services involved in a given case. The Québec Ombudsman continues to monitor the progress of this project.

4. **The Social Contract**
   5. ***Serving Citizens***
      5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

3.2.3

COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES

The Commission des libérations conditionnelles decides, with complete independence and impartiality and with the participation of the community, on the conditional release of persons incarcerated in provincial facilities. As well, it decides on appeals concerning temporary absence.

As a legislative court, and as part of a penal justice system, it contributes to the protection of society and to the social rehabilitation of incarcerated persons.

To carry out its mission, the Commission ensures the protection of society by favouring the social rehabilitation of incarcerated persons to the extent that this person demonstrates his motivation and his ability to change his behaviour. It decides on conditional release and its terms of application. It examines review requests and requests for new examinations. It acts as an appeals court for the decisions of Correctional Services with respect to temporary absence for the purpose of social rehabilitation and on repeals of temporary absence for medical or humanitarian purposes.

3.2.3.1.1 TAKEN HOSTAGE BY PUBLIC ADMINISTRATION

At the Baie-Comeau detention centre, the commissioners decided to postpone hearings for an inmate in order to subject him to a psychological evaluation.

But since the Commission only visits remote facilities such as the centres in Baie-Comeau, Amos, New-Carlisle, etc., once a month, the hearings in these cases are delayed by one month. This situation can cause significant prejudices to the incarcerated person, who might thus have his conditional release delayed for reasons for which he is not responsible.

The inmate was ready to respect the Commission's decision, but neither the detention centre authorities nor the Commission authorities wished to assume the costs of the evaluation.

The director of the detention centre considered that the facility was not compelled to assume the costs of a Commission decision. Furthermore, the Commission alleged that it did not have a budget to cover such costs. The incarcerated person thus became the hostage of two agencies that did not agree. He therefore approached the Québec Ombudsman.

The investigation revealed the difficulties of and the obstacles to communication and collaboration between Correctional Services and the Commission. The Québec Ombudsman informed the latter[1] who anticipate concluding an administrative agreement that will clarify the roles and the responsibilities of each. In the interim, the Commission agreed to cover the costs of the evaluation that it requested.

1. **The Social Contract**
   8. ***Doing the Utmost to Act Responsibly***
   8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.

3.2.4

LE CURATEUR PUBLIC (THE PUBLIC CURATOR)

The Public Curator protects and represents incapacitated persons under its jurisdiction. It also supervises the administration of the legal representatives of incapacitated persons for whom the tribunal has ordered the institution of private protective supervision. It must ensure the well-being of incapacitated persons, the safeguarding of their rights and their property, if need be. In addition, it assumes the administration and the management of unclaimed property.

For the fiscal year 1999–2000, the Québec Ombudsman completed 180 investigations, compared with 180 during the previous year. The organization's rate of substantiated complaints[1] has increased from 28% to 31%.

3.2.4.1 ACTIONS UNDERTAKEN BY THE QUÉBEC OMBUDSMAN

In November 1997, the Québec Ombudsman tabled a special report entitled "The Public Curator and the rights of the incapacitated" at the National Assembly. At that time, he pointed out that the agency still did not adequately accomplish its mission, that it wronged individuals and that it sometimes jeopardized their well-being, their safety and even their lives. Following this report and the representations made by the Québec Ombudsman, the government ordered a rectification of all the agency's activities.

Since the tabling of this report, the Québec Ombudsman has notified the agency of numerous wrongs concerning the protection of the assets of the people that it represents. The Québec Ombudsman submitted several recommendations in this regard.

The overall reform, which aims to recenter the agency in its mission, required legislative amendments, the addition of staff, and the review of all the internal regulations governing practice. The objective is to consolidate the role of the Public Curator with respect to the protection of persons, to provide a permanent solution to financial problems and to guarantee its accountability. The Québec Ombudsman adhered to the solutions chosen by the government to redress a number of failings that he had identified and denounced to the National Assembly. He is, however, of the opinion that such considerable rectification will only generate significant, and especially, permanent impacts after a period of several years.

3.2.4.2 WRONGS CREATED BY SHORT-SIGHTED ADMINISTRATION

Throughout the period of rectification within the agency, it analyzed requests for monetary redress submitted by incapacitated

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

persons or their families or friends who had never obtained satisfactory answers to the complaints that they had lodged.

Thus, at the same time, a "revolution" of ways of doing things was getting underway within the agency, the Minister of Relations with Citizens and Immigration entrusted experts with the mandate to assess the financial losses borne by persons represented by the agency, or for whom it was supposed to supervise the administration of tutorship or curatorship, and to propose redress. The Québec Ombudsman was associated with this process.

To date, the agency has paid millions of dollars in damages, various arrears and interests to persons who were victims of wrongs caused by the agency's actions or oversights. The Québec Ombudsman continues to investigate a number of files.

3.2.4.2.1 PATIENCE AND PERSEVERANCE: TWO ESSENTIAL VIRTUES

Here is an example of compensation that the Québec Ombudsman obtained on behalf of a family. It concerns a file that had been under investigation since December 1997 and for which a final settlement was secured in April 2000.

A citizen, who no longer had contact with family members, died on February 22, 1984. He had left his native region several years earlier and had settled in Montréal. He was unmarried and had no children. At the time of his death, the police were called to the scene, and they attempted, unsuccessfully to locate his family.

From the outset, the police notified the coroner of the death. Since the body was not claimed, the City of Montréal proceeded with the burial in April 1984. The settlement of the succession was entrusted to the Public Curator, as stipulated by law. The Public Curator administered, in a temporary manner, the property of this person, and later remitted it to the State.

In fact, pursuant to the *Public Curator Act*,[2] the assets entrusted to the temporary administration of the Public Curator became, at that time, the property of the State after ten years of administration by the Public Curator if no heir had shown himself during this period. On June 27, 1994, the Public Curator thus paid a sum of $79,078.56 to the consolidated revenue fund.

However, during this period, a relative of the deceased person, a potential heir, had communicated by telephone with an employee of the Public Curator in 1987. The relative wanted to know if the agency had been informed of the existence of his brother-in-law. He was advised, after verification, that no file existed under the name of his brother-in-law.

The relatives had also sought information from the Montréal police force , the Sûreté du Québec, the Régie des rentes du Québec and various retirement homes in the region, but in vain. Desperate, they approached the Direction de l'état civil to find out whether or not he was dead. The answer: No!

2. *Public Curator Act*, R.S.Q., c.C-81.

Finally, the relatives accidentally learned of his death in July 1995. They were astonished to learn that the Public Curator had administered the deceased's assets from the time of his death and had remitted it to the State in 1994. Despite the expiry of the ten-year period, the heirs asked the Minister of Finance to restore their inheritance, because the Public Curator should have informed them and given them the money rather than pay it to the consolidated revenue fund. The Deputy Minister refused to do so on September 25, 1996. The Public Curator also refused, because it admitted no responsibility in this matter, and had a legal notice in hand to prove it.

The Québec Ombudsman's investigation clearly revealed that:

The employee had only consulted the files of persons represented by the Public Curator. She did not consult the unclaimed assets files. She was telling the truth when she asserted that there was no file under the name of this person, because the deceased had never been represented by the Public Curator. Yet, had she consulted the other files, she would have seen that a file had been open since 1984.[3]

Furthermore, no organization had notified the Directeur de l'état civil about the citizen's death even though many of them had been informed of it. The Public Curator attributes this responsibility to the coroner. The coroner denied this assertion: he was supposed to notify the Minister of Health and Social Services of the death, and that is what he did. The Minister was not obliged to notify the ministère de la Justice, which was, at that time, the guardian of civil registry. The City of Montréal, which proceeded with the burial, had notified the Public Curator of the burial, but was not compelled to inform anyone else. In fact, several official entities were aware of the death; nevertheless, no procedure or entity channelled the information to the register of civil status. Who, after all, was supposed to notify the ministère de la Justice of this death so that it would be officially recorded?

The Québec Ombudsman also noted that at the time of the deceased's burial, no religious service was performed. His death was therefore not recorded in a parish registry.

These parish registries are remitted annually to the register of civil status, which ensures the registration. That is the reason for this oversight.[4]

The Québec Ombudsman recommended to the Public Curator that it return the succession to the heirs, which it finally agreed to do, remitting the sum plus interest, for a total of $116,732.62.

3.2.4.3 FOLLOW-UP ON OTHER UNIDENTIFIED WRONGS

The Québec Ombudsman reported that a number of situations were remedied and that financial compensation was paid. Yet, in light of the significant flaws identified in each of

3. **The Social Contract**
   1. ***Ensuring Government Transparency***
   1.2 Give citizens all the information they need in a timely manner.
4. **The Social Contract**
   5. ***Serving Citizens***
   5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
   8. ***Doing the Utmost to Act Responsibly***
   8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.

the autonomous service units of the agency, it is reasonable to think that other wrongs have as yet to be identified: the persons affected have not denounced them, thus they have not been tracked down. In fact, the disparate nature of the employees' interventions makes it difficult to track down all such files and to make the necessary redress, in addition to emphasizing the agency's problems with its internal communication.

The Québec Ombudsman demanded several legislative measures. It submitted recommendations to ensure that incapacitated persons' rights are respected. It expects to carefully monitor the way in which the agency applies these new regulations.

3.2.4.4 AN ADVISORY COMMITTEE

The Québec Ombudsman recommended that an advisory committee be set up to advise the agency on the protection and the representation of incapacitated persons; such a committee would be an indispensable tool for consolidating the positive effects of the rectification in progress.[5]

The criteria for selecting committee members follows one of the Québec Ombudsman's recommendations, that is, to select representatives who demonstrate a genuine interest in incapacitated persons and whose social commitment is recognized. It recommended that in order to ensure autonomy, the committee table a report of activities at least once a year to the Minister of Relations with Citizens and Immigration.

3.2.4.5 ACCOUNTABILITY OF THE PUBLIC CURATOR

In addition to the creation of an advisory committee on the protection and the representation of incapacitated persons, the Québec Ombudsman considers that the agency should be heard at parliamentary commission, at least once a year, over the next five years, and the interested persons should be invited to present their point of view on the rectification in progress. This would ensure improved accountability.

3.2.4.6 A SOLUTION TO FUNDING PROBLEMS

A permanent solution for funding problems was adopted to enable the Public Curator to fully take charge of its mission: it has become a "budgetary agency," receiving its budget from the government, following the approval of the National Assembly. The Québec Ombudsman, who made the recommendation, applauded terminating the agency's self-financing status, because it could not adequately fulfill its mission to protect vulnerable persons by continuing to draw its revenues solely from the profits it was supposed to make. The conflict was obvious.

5. **The Social Contract**
   6. ***Understanding Citizens and Making Their Lives Easier***
      6.2 Create user committees.
      6.4 Set up advisory committees made up of employees who are in direct contact with users.

3.2.4.7 ASSETS UNDER TEMPORARY ADMINISTRATION

In addition to its mandate of representation and assistance to incapacitated persons and that of supervising the administration of private representatives, the Public Curator has the mandate to handle unclaimed assets: those of the absent, those found on an unknown and unclaimed body, the products of an insurance policy held by an unknown person or a person who cannot be located, property without an owner, unclaimed assets submitted to the court clerk of a court of criminal jurisdiction, etc.

The Québec Ombudsman considers that such an administrative mandate diverts the Public Curator from its primary mission, which is to protect incapacitated persons. The agency's energies must be directed toward improving its interventions with respect to the promotion and the protection of the interests of vulnerable people. The importance of its social mission of providing representation and protection to incapacitated persons requires the Public Curator to devote itself exclusively to this. These other mandates should be entrusted to governmental agencies which are specialized in such matters.

3.2.5

RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

The Régie de l'assurance maladie du Québec administers about 40 programs, the main ones being the healthcare and prescription drug insurance plans, medical and optometry services, dental services for children and income security recipients, technical aids, health services outside Québec, lodging services and home care services. In order to have access to all these services, citizens must hold a health insurance card, commonly called the "carte soleil."

In 1999–2000, the Québec Ombudsman received 238 complaints concerning the Régie, 48% of which pertained specifically to:

- eligibility for the health insurance card;
- the waiting period for obtaining a card;
- eligibility for insured services: dental services, medical services, technical aids (hearing devices, visual aids, devices which compensate for a physical deficiency);
- delays in obtaining a service;
- telephone access.

Other claims referred to the prescription drug insurance plan (43%) and the Financial Contribution Payable by Accommodated Adults program (9%).

Over the last few years, the Québec Ombudsman has noticed a reduction in complaints against the Régie. In 1996, the implementation of the prescription drug insurance plan had resulted in an increased number of complaints but the situation has since stabilized. In 1996–1997, the Québec Ombudsman received 1,070 complaints compared to 756 in 1997–1998, 329 in 1998–1999 and 238 in 1999-2000. The rate of substantiated complaints[1] also dropped from 22% in 1998–1999 to 17% in 1999–2000.

3.2.5.1 ACCOMMODATION CONTRIBUTION

The Financial Contribution Payable by Accommodated Adults program is specifically aimed at individuals at least 18 years of age who must be housed in a private or public institution under agreement due to their state of health. Fees are calculated based on the category of room used and the patient's ability to pay. This program comprised 9% of the complaints addressed to the Québec Ombudsman for the Régie. These complaints concern the high cost of the contributions required for living accommodations. The required amounts comply with the laws and regulations, but are often

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

perceived as excessive in terms of the citizen's ability to pay: some have had to sell their home in order to pay accommodation costs for a sick spouse because in order to qualify for real assistance, their personal belongings and liquid assets must not surpass an established minimum standard.

The Québec Ombudsman has questioned the other allowable exemptions and deductions for calculating the contribution as well as the method used to establish the amount of the contribution to be paid out.[2]

3.2.5.2 ADDRESS CHANGES: PROBLEM SOLVED

In its annual reports from 1997–1998 and 1998–1999, the Québec Ombudsman reported that when couples separated or divorced, and when the individual leaving the family home would notify the Régie of his or her change of address, the computer system would automatically consider this a change of address for the entire family. The problem has since been rectified.[3]

3.2.5.3 A DECISION BASED ON MERE ASSUMPTION HAS CONSEQUENCES

Last year, the Québec Ombudsman reported on a situation in which a citizen had been refused a medical prescription because his health insurance card was no longer valid. At the time, the citizen was the subject of an inquiry because the Régie suspected that he had not stayed in Québec long enough during the year to be entitled to medical coverage by the State.

The Québec Ombudsman did not accept this procedure because it deprived an individual of his eligibility for the prescription drug insurance plan on the basis of assumptions and before the inquiry was complete. As the Régie had promised, it modified its computer system on October 1, 1999, in order to prevent further recurrences of such situations. However, before the target date, the Québec Ombudsman received two other complaints of this nature.[4] Since October 1, 1999, however, there have been no such complaints.

3.2.5.4 THE PRESCRIPTION DRUG INSURANCE PLAN THREE YEARS LATER

An Act respecting prescription drug insurance[5] provides for a review of the plan three years after coming into force. The ministère de la Santé et des Services sociaux contributed to the discussion at public hearings by publishing two documents — one providing an assessment of the plan and another on potential solutions for offsetting the deficit of some 140 million dollars anticipated for the year 2000.

On March 21, 2000, the Québec Ombudsman appeared before the Commission des affaires sociales which is mandated to hear the various groups involved in reviewing the system. He tabled his remarks entitled: "Beyond the money, fair-

2. See chapter 3.1.7, p. 89
3. **The Social Contract**
   5. *Serving Citizens*
   5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.
4. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
5. *An Act respecting prescription drug insurance*, R.S.Q., c. A-29.01.

ness" in which he laments the failure of the department's documents to fully assess the prescription drug plan and to propose adequate solutions to counter the deficit.

In fact, the department's documents focus almost exclusively on the increasing cost of medications for different client groups, and neglect to consider the benefits for Québec society. By benefits, the Québec Ombudsman means not only the money saved in other components of the health system (medical examinations, short and long-term hospitalization, etc.), but also the benefits of maintaining the good health of tens of thousands of citizens who will continue to lead active lives and contribute to the collective good. One must not forget that prescription drug insurance is just part of a larger system which aims to maintain good health for all.

The Québec Ombudsman also related a number of inequities stemming from a mixed general prescription drug insurance plan, made up both of a public insurance plan which the government offers to certain groups of people and other types of protection offered by private companies for citizens who are not eligible for the government plan. This plan has created many inequities since citizens with identical incomes do not pay the same amount for insurance, depending on whether they are insured by the government or the private sector.[6]

On May 11, 2000, at the close of public hearings, the Minister of Health and Social Services tabled bill no 117 *Loi modifiant la Loi sur l'assurance-médicaments* and *Loi sur la Régie de l'assurance-maladie du Québec*.[7] One month later, on June 15, with the express purpose of restoring the prescription drug insurance plan's financial equilibrium, the bill was adopted, raising the annual premium paid by the ministère du Revenu du Québec. Since July 1, 2000, the maximum premium amount has increased from $175 to $350. It is calculated according to the income of persons living alone and family incomes. For 2000, the maximum annual contribution cannot exceed $262.50.

Moreover, the Minister of Health and Social Services announced that other measures will soon be taken to improve the overall functioning of the plan. The pertinence of implementing a single public and universal prescription drug insurance plan will also be examined. The Québec Ombudsman is satisfied with this decision, given that he had asked that such a solution be examined when appearing before the parliamentary commission.

The Québec Ombudsman is also asking the government to take into consideration — in its review of the prescription drug insurance plan — the fact that prescription drug insurance is a social measure and that the related costs must be borne by the entire population and vary in accordance with income.

6. **The Social Contract**
   5. *Serving Citizens*
   5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

7. *Loi modifiant la Loi sur l'assurance-médicaments* et la *Loi sur la Régie de l'assurance maladie du Québec*, L.Q., 2000, c. 23.

...fully implement this social measure, the government must ensure, with the utmost concern for fairness:

- that ceilings for deductibles and co-insurance be the same for citizens with identical incomes;
- that the already considerable burden borne by employment-assistance recipients, the elderly and those whose annual income falls beneath the recognized low-income levels not be increased.

3.2.5.4.1 CONTRIBUTION SCALE

Individuals registered under the public prescription drug insurance plan must pay a contribution to cover deductibles and co-insurance when they purchase prescription drugs. This contribution has a monthly ceiling set according to the status and income of the insured person. It is therefore set at $16.66 for persons receiving the maximum Guaranteed Income Supplement and for employment-assistance recipients; at $41.66 for persons receiving the partial Guaranteed Income Supplement and at $62.49 for other insured persons.

A citizen informed the Québec Ombudsman that he had been assessed under the wrong assessment scale for the month of May. He was charged $62.49.

The Québec Ombudsman's investigation revealed that the citizen was right. Since he was receiving the partial Guaranteed Income Supplement, his contribution should have been $41.66. At the Québec Ombudsman's request, the Régie refunded the citizen $20.83.

3.2.5.4.2 EXAGGERATED REQUIRED PROOF?

Before it can issue a health insurance card, the Régie must ensure that the applicant is eligible. Under the law, citizens must provide proof of their eligibility. Therefore, in order to be able to take advantage of the plan, section 5 of the *Règlement sur l'admissibilité et l'inscription des personnes auprès de la Régie de l'assurance maladie du Québec*[8] states that a person must have a residence in Québec and must live in this residence at least 183 days a year. The Régie can therefore require that the citizen provide pertinent documents as proof, however this requirement must be reasonable. In one particular case, a citizen turned to the Québec Ombudsman and denounced unreasonable requirements.

The investigation revealed that the Régie knew that the citizen had lived outside of Québec and wanted to ensure that the citizen had lived in Québec the number of days required to be considered a resident. The Régie also verified these facts for the previous years during which the citizen had been insured.

The Régie therefore asked the citizen to provide a notice of assessment from the ministère du Revenu in order to verify if he had paid Québec income tax. The citizen refused to comply, feeling that this was an invasion of his privacy.

The Québec Ombudsman agreed to send the notice of assessment as long as it could black out the numbers pertaining to the citizen's income and paid income tax. It also agreed to send the citizen's credit card statements in the same form. Satisfied

8. *Règlement sur l'admissibilité et l'inscription des personnes auprès de la Régie de l'assurance maladie du Québec*, D. 1470-92, (1992) 124 G.O. II, 6236 [A-29, r. 0.01].

with the agreement, the citizen sent the required documents.[9]

3.2.5.4.3 COMMUNICATION BETWEEN PROVINCES

The Régie also provides services for persons who encounter health problems outside Québec. As such, a person who consults a physician in another province must present his health insurance card. The Régie then directly pays physicians who accept remuneration according to Québec rates. However, if the physician does not accept Québec rates, the patient must pay the health professional the required fees and request a refund from the Régie. The Régie reimburses citizens the amount equivalent to Québec rates.

A citizen contacted the Québec Ombudsman because she received a $140 bill for anaesthesia after undergoing a surgical procedure in an Ottawa hospital. The woman's physician had referred her to this hospital since the particular health service she required was not available in Québec. Prior to the operation, she obtained the Régie's authorization through her physician. However, following this, a mistake was made in processing her claim.

At the Québec Ombudsman's request, the Régie contacted the hospital to inform the latter that this service was covered by Québec and that the patient need not pay for the services she had received. The hospital agreed.

9. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
   3.2 Promote respect for basic rights and freedoms in each action that is taken.

3.2.6

RÉGIE DES ALCOOLS, DES COURSES ET DES JEUX

The Régie des alcools, des courses et des jeux enforces laws respecting alcoholic beverages, horse races, lotteries, publicity contests, amusement machines, video lotteries, and professional combat sports. It is responsible for issuing, suspending, annulling or revoking permits, licences, authorization and registration certificates provided for under these various laws.

3.2.6.1 INADEQUATE CLIENT SERVICE

On December 3, 1999, the Québec Superior Court declared a section of *An Act respecting liquor permits*[1] inoperative because it contravened the *Charter of Human Rights and Freedoms*[2] in that this section created a reasonable apprehension of bias and violated the rules of natural justice relating to the suspension and revocation of permits. The Régie agreed to comply with the decision and took steps to implement a decision-making process which would respect the requirements.

This year, the cases brought to the Québec Ombudsman's attention emphasized the Régie's problems in providing adequate customer service. Citizens faced excessive delays in waiting for responses. The Régie gave several reasons to explain the delays—high staff turnover, the Superior Court's ruling and a staff shortage. Even the Québec Ombudsman found it difficult to obtain a timely response from the Régie. Obviously, dealing with the Régie requires time and patience.

Furthermore, the Régie's failure to act and its lack of power with respect over publicity contests leads the Québec Ombudsman to question the pertinence of certain practices this year. Mediation during a legal dispute regarding publicity contests provides a good example: the Régie does not have the authority to pursue an intervention if a party refuses to participate in the mediation; what is more, mediation offers no clear advantage to either party.

3.2.6.2 THE DILIGENT VS THE NEGLIGENT?

Many citizens complained of the length of time the Régie takes to respond to claims pertaining to publicity contests.

1. *An Act respecting liquor permits*, R.S.Q., c. P-9.1.
2. *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

3.2.6.2.1 WIN OR LOSE?

On April 26, 1995, a citizen informed the Régie that a company refused to award her the prizes she had won in a publicity contest. It took the Régie more than three years to respond to the woman's complaint, in the end informing her that she had to take the problem to the courts in order to protect her rights.[3] Dissatisfied, the citizen requested that the Québec Ombudsman intervene on her behalf.

The Régie informed the Québec Ombudsman that, since April 1, 1998, the law merely grants it the role of mediator in cases where both parties are consenting. Therefore, since the company which had organized the contest refused any form of mediation, the court became the only possible means of recourse. As well, the Régie blamed any delays on the numerous staff changes in its Service des affaires juridiques [legal services department] over the last two years.

The Québec Ombudsman informed the Régie that, at the time of the initial request in 1995, the Régie had the jurisdiction for handling this matter. Accordingly, the Québec Ombudsman requested that the Régie offer the citizen a settlement. The Québec Ombudsman will closely monitor this case.

3.2.6.2.2 WHEN THE RÉGIE GETS INVOLVED

The owner of a seniors' residence, next door to two hotels, was considerably inconvenienced by the loud music and the noise coming from the terrace which compelled many of his residents to file complaints with the police.

Before the Régie, the hotel representatives agreed to take steps to reduce the noise level. Despite their promises, the situation remained unchanged.

In May 1998, the owner filed a new complaint with the Régie. However, apart from the acknowledgement of receipt which

3. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Give citizens all the information they need in a timely manner.
   5. ***Serving Citizens***
      5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
   8. ***Doing the Utmost to Act Responsibly***
      8.6 Provide services and information, and convey decisions, within a reasonable length of time.

the owner received in July 1998 and despite the five letters he sent,[4] the Régie remained silent for almost a year. The owner therefore requested that the Québec Ombudsman intervene.

During its investigation, the Québec Ombudsman learned that an inquiry was expected to be carried out by two Régie officials on July 8, 1999. The hotel representatives once again agreed to comply with the standards and cease being a public nuisance to their neighbours.

In January 2000, the citizen still had not received the Régie's decision. In fact, the Régie showed no sign of life despite the many letters sent by the citizen. The latter once again requested that the Québec Ombudsman intervene.

After numerous interventions, the Québec Ombudsman secured a written response from the Régie. Without even apologizing, the Régie justified the delays citing the Superior Court's ruling of December 3, 1999 which declared a section of *An Act respecting liquor Permits* inoperative. The Régie agreed to comply with the decision and implement a decision-making process for the suspension and revocation of permits that meets the prescribed requirements.

In the owner's case, the Régie's Service de l'analyse [analysis office] must now examine the results of the inquiry carried out on July 8, 1999 and decide on appropriate measures to be taken. The Québec Ombudsman will continue to monitor this case.

3.2.6.2.3 TRUTH OR CONSEQUENCES

In February 1998, the Régie revoked the liquor permit of a convenience store co-owner because her licence fees had not been paid. The citizen rectified the situation, saying that she had never received the notice of renewal which the Régie claims it sent.

Despite the explanations she provided, the citizen was forced to pay additional costs for a new permit request. The citizen complained to her local MNA who then forwarded the complaint to the Québec Ombudsman.

The Québec Ombudsman deemed that the citizen's story was credible: her permit had come up for renewal at the end of a postal strike and in the aftermath of the January 1998 ice storm.

The Québec Ombudsman asked the Régie to take these circumstances into consideration and give the citizen the benefit of the doubt. After countless discussions, the Régie agreed to reimburse the citizen.[5]

4. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Ensure, where applicable, that citizens clearly understand the information conveyed to them.
   8. ***Doing the Utmost to Act Responsibly***
      8.6 Provide services and information, and convey decisions, within a reasonable length of time.
5. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
      3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
      3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.2.7

RÉGIE DES ASSURANCES AGRICOLES DU QUÉBEC

The Régie des assurances agricoles du Québec comes under the jurisdiction of the Minister of Agriculture, Fisheries and Food. Its agricultural insurance mission consists of supporting the economic growth of agriculture while protecting the revenues of businesses that are at risk both in terms of nature and the marketplace. The insurance offered to farmers are crop insurance and income stablization insurance.

Crop insurance covers income losses attributable to lowered yields caused by adverse climate conditions and uncontrollable natural phenomena. Participation in this plan is contractual. The value recorded in the contract is determined in terms of the yield anticipated per insurable unit and a unit price.

Stabilization insurance has the purpose of guaranteeing a net positive income to producers. Thus, compensation is paid to the insured when his net annual income is lower than the net annual stabilized income. The insurance covers, for any defined product, income losses attributable to significant market fluctuations. Participation in this insurance plan is contractual and registration carries a term of five years.

3.2.7.1 COMPENSATION

The 1998 harvest year was described as a very good production year for most crops. Compensation paid in crop insurance totalled approximately $15.4 million for the year 1998–1999, compared with $43.1 million for the previous year.

As for income stabilization insurance, the compensation paid increased considerably, given the weakness of prices on the hog, grains and cereals, grain corn and soya markets, which are among the most significant types of production covered in terms of insured value. Thus for the year 1998–1999, the Régie paid producers $581.5 million, compared with $191.2 million for the previous year.

3.2.7.1.1 A HASTY DEDUCTION

In September 1998, a citizen paid $1,079 to the Régie to settle his crop insurance premium on two of his three alfalfa fields. But since the regulation does not provide for insuring a part of a type of production and the producer did not wish to insure the third field, the Régie notified him that it would reimburse him this sum.

Yet, it only reimbursed him the amount of $777.62: it retained the difference of $301.38 to cover an insurance premium

contracted on another crop, corn, and which had just been adjusted. The producer had difficulty understanding the Régie's way of doing things and asked the Québec Ombudsman to intervene.

The Québec Ombudsman noted that when a farmer insures a type of production, the Régie establishes a premium, subject to reassessment over the course of the year according to yield probability. However, this premium supplement is only payable when the Régie pays, in turn, a compensation to the farmer: that is when it pays out compensation on the amount it owes.

In the citizen's case, the Québec Ombudsman concluded that the Régie compensated itself for a premium that was not yet due. What is more, it did this directly from an amount that it should never have received, since the farmer had relinquished insuring his alfalfa production.[1]

But at the time of the Québec Ombudsman's intervention, the compensation for the corn crop had just been paid: the premium supplement for this insurance thus became payable. However, the matter of the ill-timed payment remained. In this respect, the Régie accepted the Québec Ombudsman's arguments and decided to change its computer procedure so that in the future, a premature compensation cannot be withdrawn directly from another sum paid by farmers.

1. **The Social Contract**
   5. *Serving Citizens*
      5.2 Adopt rules and procedures that promote the well-being of citizens rather mere bureaucratic expediency.

3.2.8

RÉGIE DES MARCHÉS AGRICOLES ET ALIMENTAIRES DU QUÉBEC

The Régie des marchés agricoles et alimentaires du Québec is an economic regulatory agency. It promotes the efficient and orderly marketing of agricultural and food products, the development of harmonious relationships among the various stakeholders as well as the resolution of difficulties arising within the framework of the production and the marketing of agricultural, ocean and forest products, taking into account consumer and public interests. Specifically, it approves the constitution and the administration of vehicles, such as joint plans required for marketing all such products. As a result, the law stipulates that the Régie must periodically assess the interventions of the various offices that apply these joint plans.

3.2.8.1 CAN TWO HATS BE WORN AT ONCE?

The Régie wore two hats during public hearings on the "Plan conjoint de la pomme" administered by the Fédération des producteurs de pommes du Québec. In this market, transactions are conducted as follows: only the packagers can buy apples from producers for the purpose of resale to retailers and to processing businesses. The packager is thus the agent officially recognized by the regulation. Yet upon the Régie's assessment, producers denounced the situation of conflict of interest in which several Federation administrators found themselves: they held interests in the apple packing stations while at the same time being producers.

In its inquiry report the Régie noted that it had observed tension among categories of producers as well as among the administrators. Thus, varied, even ill-defined interests and needs fostered ambiguity among mandates and roles, the Régie asserted. It added that such lack of consensus negatively affected the commercialization efforts for the joint plan. Finally, it recommended that, given the observations on the producers' specific and sometimes divergent interests, the Federation should reflect on the relevance of adjusting the plan's operating structures to ensure that the specific interests of each category of producers are protected and represented.

Despite these recommendations, the Federation did nothing to correct the situation. Although the Régie asserts that it is certain of the Federation's intention to follow up its report, those producers who have requested information obtain hardly any specific answers from this agency when they urge it to respect its own recommendations.

The Québec Ombudsman reminded the Régie of the

shortcomings that it had itself observed: the situation was such that the Québec Ombudsman feared serious prejudice to the efforts approved by those in the field for the orderly and effective commercialization of apples in Québec. Given that the core of the problem lay with the Régie's duty to act in accordance with its mission and its legal obligations, the Québec Ombudsman concluded that the Régie should act and ask the Federation to correct the shortcomings.

Thus, the Régie examined the commercial interests held by some of the Federation administrators in the packing stations. It reached the following conclusion:

> "L'administrateur de cette fédération qui, grâce à son actionnariat, obtient un statut privilégié par rapport au producteur ordinaire, nous semble aller à l'encontre de sa mission, et ce, sans égard à l'importance économique des intérêts détenus."
> ["The administrator of this federation who, as a result of his stock ownership/investment, secures privileged status compared with that of the ordinary producer seems, in our view, to act contrary to his mission, and this, regardless of the scope of the economic interests held."]

The Régie granted these administrators ten days to relinquish their shares. They decided, however, to appeal to the Administrative Tribunal of Québec, which confirmed the Régie's decision. The administrators relinquished their interests in the packaging stations in order to continue occupying their function within the Federation. The matter of conflict of interest for these administrators has thus been settled.

3.2.9

RÉGIE DES RENTES DU QUÉBEC

The Régie des rentes du Québec administers a public plan financed by workers and employers. This plan offers different types of protection, the most important of which are the retirement pension, the disability pension and the surviving spouse's pension. It is also responsible for monitoring private pension plans, in addition to administering the family assistance plan which includes the family allowance and the allowance for handicapped children.

The number of consultations and complaints during the 1999–2000 fiscal year and the way in which they are categorized is essentially the same as last year. One third of the complaints received concern the disability pension and the second largest number of complaints relates to the family allowance. The agency's rate of substantiated complaints[1] is stable at 18%.

Family benefits have not been universal since September 1997. They are calculated based on family situation (single-parent or two-parent), family income and the number of children. Family benefits are paid to the person who has one or more dependent children.

3.2.9.1.1 MISTAKE CONCERNING THE DEBTOR

Following the divorce of a couple with two children, the judge placed their daughter in the mother's custody and their son in the father's custody.

In July 1997, the mother obtained custody of her son. She informed the Régie and, as a result, received a total of $25.42 per month in family benefits for her two children until December of the same year.

During this time, the father, who was a social assistance recipient, continued to declare his son as a dependent and thus continued to receive a family allowance of $189 per month, based on his income.

In May 1999, the mother received a claim for $758 in overpayment between September and December 1997. The Régie informed her that it had proof she had received the amounts paid out to her ex-spouse. In fact, the Régie had a sworn declaration from her ex-spouse which stated that he had given her the money in December 1997 before two witnesses.

She contested this proof in writing, stating that what her husband claimed was untrue and explicitly denied having received the money.

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.

However, in August 1999, a decision rendered by the Bureau de révision [review office] upheld the $758 claim and confirmed that the entire amount of family benefits she was entitled to would be withheld from her to pay off the debt. The decision was justified by the fact that the mother had failed to provide proof that she had not received the money.[2]

The Québec Ombudsman emphasized no privity existed between the Régie and the mother with respect to the debt incurred by her ex-spouse. It therefore asked that the debt be annuled. The Régie assented.[3]

3.2.9.1.2 NO ONE IS ABOVE THE LAW...

Upon moving in with her new spouse in March 1998, a citizen gave birth to her baby. Eleven months later, in February 1999, she gave birth to a second child.

In March 1999, she received a $1,489 claim for overpayment of family allowances.

The claim was based on a legislative provision which states that the amount attributed for the family allowance is based on the income of the person who rightfully receives this allowance and that of the person's spouse. A person is considered a spouse after the first of the following dates:

- After 12 months of living as the beneficiary's common-law partner;
- the day on which the spouse becomes the birth or adoptive parent of the beneficiary's child.

In this case, the amount of the claim covers the period between March 1998 and March 1999, less than twelve months after the couple started living as a common-law couple and before the birth of their child. The claim was therefore a mistake.

The Québec Ombudsman reminded the Régie that the status of spouse was not acquired until February 1999, at the time of the child's birth, and as such, the amount granted for family allowance benefits could not be calculated using the spouse's income until the month following the child's birth.[4] The Régie agreed to cancel its claim.

3.2.9.1.3 BUREAUCRATIC LAXNESS

In March 1999, a citizen issued a procuration to the Régie as the new mandatary of her sister who was a pension recipient. An agent from the Régie informed the citizen that she would consult a notary because she had not received a revocation of the first mandate. Despite the agent's intentions, however, a notary was never consulted.

In fact, in March 2000, the citizen pointed out, on two separate occasions, that the relevés 2 had been mailed directly to her sis-

2. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
   4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.
   4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.
3. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
4. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.

ter despite the fact that they were issued to the beneficiary. The woman's sister was in a long-term care centre and unable to administer her personal business. The Régie told the citizen that it was not permitted to send her any confidential documents since the first mandate had yet to be revoked.

The Québec Ombudsman intervened to find out why the Régie refused to forward the relevé 2 to the new mandatary. It was of the opinion that, as provided for in the *Civil Code of Québec*,[5] a new mandate automatically revoked the old one. Furthermore, if the agent had contacted the notary as expected, the matter would have been quickly resolved.[6]

The Régie agreed with the Québec Ombudsman's arguments and made the necessary modifications on the very day of his intervention.

3.2.9.1.4 IT'S JUST COMMON SENSE

A 60-year old contributor received his retirement pension in January 1998. The following month, he was recognized as being disabled. Since a citizen cannot legally receive two pensions (retirement and disability) at the same time, the man's retirement pension was cancelled and replaced by the disability pension.

However, in May 1999, the Commission de la santé et de la sécurité du travail recognized an employment injury sustained by the worker and began paying the latter indemnities to which he was entitled retroactively since 1996.

Some time later, the Régie claimed $16,000 in overpayment of disability pension from the worker, claiming that no one is entitled to receive a full income replacement indemnity in addition to a disability pension.

The contributor therefore reimbursed the disability pension which he had been paid, expecting his retirement pension to be reinstated since January 1998. The Régie refused, citing that, since July 1998, the law no longer allowed retirement pensions to be paid out as long as the contributor was receiving a full income replacement indemnity.

The Québec Ombudsman disputed this decision and emphasized that the retirement pension should be paid out for the following reasons:

- The retirement pension was payable before the legislative change forbidding two pensions from being collected concurrently;
- if the Commission de la santé et de la sécurité du travail had recognized the work accident upon the initial request, the retirement pension would have been payable starting January 1, 1998.

The Régie adopted the Québec Ombudsman's position and the retirement pension was paid out retroactively from January 1998.[7]

5. *Civil Code of Québec*, S.Q. 1991, c. 54.
6. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
   3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
7. **The Social Contract**
   3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
   3.1 Abide by special statutes and regulations as well as regular legislation.
   3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.2.9.1.5 THE RÉGIE: A WATCHDOG?

When she left her job in 1991, a citizen had been contributing to her employer's pension plan since 1985. Upon leaving, her new employer and former employer signed a transfer agreement which would allow the value of her pension plan, on a capitalization basis, to be transferred into the existing pension fund at Hydro-Québec, her new employer. This type of agreement allows for the continuation of pension funds, thereby facilitating worker mobility. In 1996, the citizen changed jobs once again. This time, her new employer did not have a group pension fund. In a case like this, the law holds that a contributor can be reimbursed the present accumulated value of her pension fund. As such, the worker received $14,000.

Surprised by the small amount she received, the worker asked the Régie to double check the figures. The Régie informed her that they could not be sure that the employer had acted in accordance with the law since the information provided by the latter was incomplete. The citizen insisted that the Régie make the required verifications. Until 1998, she periodically asked the Régie about the case but never received any information or valid answers on their intervention with Hydro-Québec.

Near the end of its investigation, the Québec Ombudsman learned that the Régie suspected the employer of failing to correctly apply the law when calculating the worker's refund. An agent at the Régie had in fact questioned Hydro-Québec on several occasions but had failed to receive any valid answers. The Québec Ombudsman felt that the agency did not make every effort to settle the matter.[8] It therefore urged the Régie to intervene more persistently with Hydro-Québec's actuary. As a result, the latter revised his calculations and found that an additional $5,000 should have been awarded to the ex-employee. The latter was paid the amount in May 1999.

8. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
      1.2 Give citizens all the information they need in a timely manner.
   8. ***Doing the Utmost to Act Responsibly***
      8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

3.2.10

RÉGIE DU BÂTIMENT

The Régie du bâtiment is mandated with overseeing the administration of the *Building Act*.[1] This act aims to ensure proper quality of construction work and the safety of persons who access buildings intended for public use. Its main purpose is to protect consumers who do business with a building contractor and counter underground labour practices in the construction industry.

The Régie is also responsible for issuing licences according to the different contractor classes: specialized general contractor, general contractor and trade contractor. It has the right to suspend, annul or refuse to renew a licence if necessary.

3.2.10.1.1 AN INVALID REGULATION

In June 1998, a citizen started a small ventilation system cleaning business. He questioned the Régie as to whether he needed a licence to operate this business. The Régie informed the man that he needed a trade contractor's licence in air duct maintenance. To get his licence, the citizen would need to take some classes and exams. This made the latter quite nervous, and to ensure that he would successfully pass his exams, the contractor stopped working for three weeks. During his training in September 1998, he learned that the regulation requiring him to obtain a licence was invalid. He questioned the Régie about the matter but never got a valid response. Furthermore, the citizen was worried about the income he had lost during his full-time studies. Dissatisfied with the information he was given, the man turned to the Québec Ombudsman for help.

The Québec Ombudsman observed that there is in fact a regulation which requires that a trade contractor licence be obtained in this particular industry and that this regulation is invalid. Though the Régie was aware of this, it never abolished the regulation. As a result, its employees continued to require compliance with the provisions of the regulation, unaware that they were actually misleading citizens.[2]

The Québec Ombudsman asked that the Régie adequately inform its staff and compensate the citizen for the lost work weeks. The Régie recognized the merits of the recommendations and adequately compensated the citizen.

1. *Building Act*, R.S.Q., c. B-1.1.
2. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Give citizens all the information they need in a timely manner.
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.2.10.1.2 AN ADMINISTRATIVE DETAIL

In a single year, a company specialized in kitchen-cabinet making received a dozen violation notices from the Régie pertaining to the installation of kitchen cabinets in its clients' homes. In fact, the Régie's inspectors — who verify the renovation and building permits issued by municipalities — had noticed that the company did not have the licence required for installing kitchen cabinets.

The citizen, who was the sole shareholder of his business, held the required licence in his name . . . but the contracts were in his business' name. The citizen wanted to rectify the situation, but if he was compelled to pay $1,700 for each of the infractions, he would run the risk of being forced to declare bankruptcy. Despite his many attempts to argue his case, the Régie upheld its decision.[3] He therefore asked the Québec Ombudsman to intervene on his behalf.

The Québec Ombudsman noted that the citizen was acting in good faith and that he quickly corrected the mistake by modifying his contracts. It also noted that the entrepreneur's clients had done business with a qualified worker, thereby respecting the intent of the law.

The Québec Ombudsman suggested that the Régie refrain from issuing any more violation notices for work done before the necessary corrections were made to the contracts and, in conjunction with the crown prosecutor's office, withdraw the charges pending. The Régie and the crown prosecutor's office accepted this proposal.

3. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.2.11

RÉGIE DU LOGEMENT

The Régie du logement is a tribunal specialized in residential leases. It informs citizens of their rights and obligations, promotes conciliation between landlords and tenants and, when the parties to a lease cannot come to an agreement, it arbitrates the dispute.

3.2.11.1.1 VICTIM OF HAVING HER CARDS STOLEN

A citizen had her identification cards stolen and informed the police. A few weeks later, her financial institution refused to advance her a loan because of her high debt ratio. Surprised, the citizen rushed to get a copy of her credit file. Upon doing so, she learned that the person who had stolen her identification cards not only defrauded credit companies but also signed a lease for an apartment and skipped out on the rent. The citizen's credit file indicated a comdemnation for the non-payment of rent brought against her by the Régie.

The citizen contacted the Régie. Despite her explanations, the Régie refused to send her a copy of the decision because she did not have the number of the decision, the date on which it was rendered or the name of the other party involved in the case.[1] The citizen therefore asked the Québec Ombudsman to intervene.

The Régie finally admitted its mistake and agreed to trace the decision in question. The Québec Ombudsman sent the citizen a copy of the decision so that she could request that it be withdrawn and therefore have her credit file corrected.

1. **The Social Contract**
   5. *Serving Citizens*
   5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
   7. *Respecting Personal Dignity*
   7.3 Avoid treating citizens who claim a service or benefit as if they were seeking privileges and not rights.

3.2.12

SOCIÉTÉ D'HABITATION DU QUÉBEC

The Société d'habitation du Québec is the agency responsible for housing policies and programs.

It aims to facilitate access to suitable housing, promote the improvement of overall housing conditions in Québec, and encourage the development and recognition of Québec-based expertise in housing. It implements and administers several programs, including the Shelter Allowance program which provides direct financial assistance for rent to low-income households and residential adaptation programs for seniors or persons with disabilities.

During the 1999–2000 fiscal year, the Québec Ombudsman asked the Société to be more open and flexible in applying its standards.

3.2.12.1.1 A TOP-SECRET POLICY

A citizen filed a request with the Société for a grant under the RénoVillage program. This program is aimed at low-income owner-occupants living in rural areas and allows them to obtain financial aid for the repair of major building defects in their main residence. The mandatory of the Société — an agent from a regional county municipality — verifies each applicant's eligibility to the program. The agent who handled this particular case refused to grant the citizen eligibility, citing the vaguest of reasons. The citizen therefore asked the Société for further clarification. Dissatisfied with the explanations provided, she turned to the Québec Ombudsman for help.

The Québec Ombudsman then learned that both the mandataries and the employees of the Société were unaware of an administrative policy specifically designed to determine program eligibility, which prevented them from adequately informing citizens and making enlightened decisions.[1]

In fact, the program does not apply to a building if, on the date the request for financial aid is signed, this building is only used on a seasonal basis. The Société thereby prevents the granting of subsidies for cottages or second residences.

But, what happens when someone decides to take up permanent residence in his cottage? When is it determined that a building is no longer used on a seasonal basis and that the owner is thus eligible for financial assistance under the program?

1. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
      1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

To answer the question, the Société has a policy whereby a building used only on a seasonal basis becomes eligible for the program once it has been used as a main residence for at least one year. Given that many of the Société's mandataries and employees were unaware of this policy, the Québec Ombudsman recommended that the information be quickly disseminated to all those concerned.

With the additional explanations, the citizen realized that she was not eligible for the program since the cottage had only been her main residence since the previous summer. Yet she was pleased to know that she would be able to re-apply the following year.

3.2.12.1.2 TOO FAST FOR THE PUBLIC ADMINISTRATION?

Suffering from multiple sclerosis, a citizen requested financial aid under the *Residential Adaptation* program in May 1996. In 1999, the Société refused to refund costs related to the installation of a track lift because the work had been done prior to authorization.

The Québec Ombudsman's investigation shed some light on the particular circumstances surrounding the installation of the track lift at the citizen's residence. In the spring of 1998, in accordance with the Société's notice, the citizen consulted an occupational therapist in order to evaluate her adaptation needs. In his report of May 1998, the occupational therapist recommended the installation of a track lift. In fact, the reduced work hours imposed by her employer would soon force her to stay home alone two days a week.

Given her occupational therapist's recommendation, and feeling pressured by her new work schedule, the citizen decided to have the lift installed in August 1998, without waiting for authorization. The salesman had agreed to advance her credit for a few months while she awaited payment of the Residential Adaptation program subsidy.

Upon studying the case, the Société questioned the adaptation method chosen by the citizen. Could a less costly but equally efficient method have been used? Was the adaptation, as carried out, functional? After discussion with the occupational therapist, the Société concluded that the chosen adaptation method was the most appropriate for the client's condition but still refused to reimburse the installation costs because the work had been carried out before the Société granted its authorization.

The Québec Ombudsman felt that the citizen had no other choice but to quickly carry out the installation of the lift. For this reason, the Québec Ombudsman recommended that the Société waive the regulation and reimburse the incurred costs, which it did.[2]

2. **The Social Contract**
   3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
      3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
      3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.
      3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

3.2.12.1.3 ESSENTIAL INFORMATION MISSING

A citizen received a brochure from the Federal government which included information on the Home Adaptations for Seniors' Independence program, administered by the Société. The Federal government finances 75% of this program and the Government of Québec finances the remaining 25%. The brochure stated that, under certain conditions, the Société could provide financial aid for the repair and renovation of homes or lodgings of persons who are 65 years of age or older. Interested in learning more about the program, the citizen contacted the Société. Contrary to the information provided in the brochure, the Société informed the citizen that renovation work on homes or lodgings was not included as part of the program. Wishing to clarify the situation, the citizen called upon the Québec Ombudsman.

The Québec Ombudsman informed her that the regulations pertained to adaptation work rather than renovation work. The work done on the building must correspond to the nature of the person's loss of capacity.

In order to verify if the work requested by the citizen was eligible under the program, the Québec Ombudsman put her in contact with a Société agent who was specialized in the matter. Following their conversation, the agent concluded that the work requested by the citizen was in fact eligible under the program and suggested that she fill out a request for financial aid.

As a result of this intervention, the Québec Ombudsman recommended that the Société consult the Federal government in order to ensure that the brochure would be modified. Shortly thereafter, the modifications were made and, as a result, citizens now have access to complete and accurate information.[3]

Though the Québec Ombudsman does not exercise the right to monitor the Federal government, there are occasions when its intervention has an impact on the latter's actions.

3. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Give citizens all the information they need in a timely manner.

3.2.13

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

The Société de l'assurance automobile du Québec insures and protects individuals against road-related risks. Its mission includes four distinct yet complementary mandates:

- Compensation and rehabilitation of accident victims;
- promotion of road safety;
- management of the right of access to the Québec road system and the related collection of duties;
- control of motor transport of both people and goods.

In 1999–2000, for all of the Société's activities, the Québec Ombudsman investigated 437 incidents compared with 528 in 1998–1999. The agency's rate of substantiated complaints[1] dropped slightly from 27% last year to 25% this year.

3.2.13.1 COMPENSATION FOR ROAD ACCIDENT VICTIMS

Where compensation is concerned, the Québec Ombudsman led 216 investigations in 1999-2000 compared to 257 in 1998–1999. The rate of substantiated compensation complaints went from 37% last year to 33% this year.

3.2.13.1.1 INFORMATION FOR ROAD ACCIDENT VICTIMS

In 1991, the Société defined its organizational values which comprise the primacy of the citizen, and the demonstration of integrity and fairness in all action undertaken by the Société. In 1995, the Société published a guide called: "Intégrité et équité, une question de conduite" [Integrity and fairness: A question of good conduct] in which it expressed its commitment to effectively communicating with its client group. The document stated the following: "que l'information communiquée par la Société sera maintenue à jour, adaptée aux besoins de la population et des clientèles internes et transmise dans un langage accessible et compréhensible". ["that the information diffused by the Société will be kept up to date, adapted to the needs of the public and internal client groups, and written in clear, understandable language".]

Thus the Société has applied one of the guidelines found in the Social Contract, the set of guidelines published by the Québec Ombudsman to assist the public administration in improving the quality of public services.[2]

In September 1999, the Québec Ombudsman asked the Société to include more information in its documents intended for citizens who wish to know about their road

1. The rate of substantiated complaints is the number of justified complaints out of the number of investigations completed by the Québec Ombudsman.
2. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Give citizens all the information they need in a timely manner.

accident compensation rights.

In November 1999, the Société accepted some of the Québec Ombudsman's suggestions and agreed to make certain changes to its documentation. Most notably, the Société added the phrase "dans les limites fixées par la loi" ["as limited by the provisions of the law"] after the words "complete protection". This phrase emphasizes the fact that as with other insurance plans, the coverage provided by the Société is also limited.

In addition, the amendments to the *Automobile Insurance Act*[3] and its regulations led the Société to review some of its form letters, specifically those dealing with lump-sum indemnities for non-pecuniary damages. The Société submitted these letters to the Québec Ombudsman for comments. As a result, the Québec Ombudsman collaborated with the writing team and suggested that they add a list of the types of injuries covered along with an explanation of how the temporary award for damages is calculated so that victims may be better able to judge if they should challenge the decisions made. The Société agreed to modify the content of the letters.

A citizen turned to the Québec Ombudsman to inform the latter that he brought the Société before the Court of Québec's small claims division. The judge, however, refused to hear the case for legal reasons. In fact, the action brought against the Société could only be heard before the Civil Chamber of the Court of Québec, not before the small claims division, and it was not the court clerk's responsibility to inform the citizen of the eligibility of this action before this particular division. In order to spare other citizens similar delays and unnecessary steps, the Québec Ombudsman asked the Société to modify the content of its decision letters so that from the outset, citizens wishing to institute legal proceedings against the Société would go to the right place.[4] The Société complied with the Québec Ombudsman's request.

3.2.13.1.2 IN THE CITIZEN'S *INTEREST*

In its previous annual report, the Québec Ombudsman reported on a case in which the Société, in November of 1996, finally agreed to pay a citizen an indemnity for permanent physical impairment that he sustained as a result of a car accident in May 1979. Even though it agreed to pay an indemnity, it was only upon reviewing the case in August 1998 that the Société finally agreed to pay the interest calculated from and accumulated since November 1996, the date on which the section of the Act giving him the right to the indemnity payment [or the interest on the indemnity] came into force. The interest was intended to compensate victims for lost income when they have been deprived of their indemnity in cases found to constitute an act of "flagrant injustice." For this reason, according to the Québec Ombudsman, it was valid to ask the Société to calculate the interest owed until August 1998 — rather than November 1996 — since the Bureau de révision [review office] did not render its decision to grant the interest until this time. The Société agreed to pay the additional interest to the victim.

3. *Automobile Insurance Act*, R.S.Q., c. A-25.
4. **The Social Contract**
   1. ***Ensuring Government Transparency***
      1.2 Give citizens all the information they need in a timely manner.
      1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.
      1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

From now on, interest owed will be calculated until the date on which this interest is to be paid to the victim rather than until the date on which the lump-sum indemnity which gives rise to the interest is paid out

3.2.13.1.3 MISINTERPRETATION OF THE LAW

In its previous annual report, the Québec Ombudsman mentioned that the Société had misinterpreted the provisions of the Act that pertains to the method for determining gross income for the purpose of calculating the death indemnity payable to the surviving spouse.

In fact, according to section 63 of this particular Act, the surviving spouse of a road accident victim is entitled to a lump-sum indemnity. This indemnity is calculated based on the income replacement indemnity to which the victim would have been entitled if he had survived. Furthermore, according to section 51, the income replacement indemnity must never be less than the indemnity that would have been calculated based on the gross annual income of a person with a minimum wage salary. The fact that the Société calculated the death indemnity based on the victim's gross income — which was lower than the minimum wage — showed disregard for these principles.

The Québec Ombudsman brought this to the attention of the Société which, on March 24, 1999, confirmed that it had modified its interpretation of the provisions included in the Act.

The Société's new interpretation resulted in 33 surviving spouses receiving over $359,000 in indemnity payments.

3.2.13.1.3.1 RIGHTS IGNORED

According to the law, a road accident victim whose main occupation consists in taking care of a child under 16 years of age or of a person who, for any reason whatsoever, is ordinarily unable to hold any employment, is entitled to receive an indemnity for care expenses should this victim become unable to care for the person. From the 181st day following his accident, the victim may, at any time he considers appropriate, elect to continue receiving the same indemnity or adhere to the regular plan which entitles the victim to receive an income replacement indemnity. The latter is calculated based on the employment which the Société has determined for the victim according to his training, experience and physical and intellectual abilities at the time of the accident. From the 181st day after the accident, the victim is no longer entitled to both types of indemnity. The victim is given the option of choosing between the care-expenses indemnity and the income replacement indemnity as long as he is eligible for both. If a victim has chosen to receive the indemnity for care expenses, but no longer meets the eligibility requirements of it, the Société then evaluates the victim's eligibility for income replacement indemnities.

In order to evaluate a person's capacity to work in an occupation, the Société must question whether the person is able to perform the tasks related to this occupation. To do this, the Société refers to the Répertoire informatisé des données en information scolaire et professionnelle.

In order to evaluate a person's capacity to care for a child under 16 years of age or for a person who, for any reason whatsoever,

is ordinarily unable to hold any employment, the Société ranks such a care-taking occupation as equivalent to that of a nanny, and refers to the Répertoire to determine the particular work duties which it must consider in its evaluation.

The employment determined by the Société for the purpose of establishing entitlement to the income replacement indemnity may differ from the occupation of nanny. Furthermore, a person who opts for the indemnity for care expenses can later change to the regular plan, whereas a person who chooses the income replacement indemnity cannot subsequently change back to the other plan, as this decision is considered final.

In one particular case, a citizen informed the Québec Ombudsman that, after deeming her fit to care for her son in October 1998, the Société had stopped paying her the indemnity for care expenses. This decision had been made by the Bureau de révision of the Société and upheld by the Administrative Tribunal of Québec. The citizen did not understand why she was being punished for choosing the indemnity for care expenses over the income replacement indemnity.

She provided the Québec Ombudsman with a copy of the decision rendered by the Administrative Tribunal of Québec. One particular point concerning the victim's option between the two indemnities attracted the Québec Ombudsman's attention. The Tribunal wrote:

"The Tribunal cannot question the victim's decision . . . At the time, she chose the option which provided her the greatest financial advantage (in this case, the indemnity for care expenses.) Nothing prevented her from obtaining information on the consequences of her decision, specifically from her agent whom she contacted on several occasions . . . "

The Québec Ombudsman did not share the Tribunal's point of view. It didn't feel that the victim should have been required to obtain information. In accordance with paragraph 2 of section 82 of the *Automobile Insurance Act*,[5] it is the Société's responsibility to provide victims with information on the consequences of their choice. Upon analyzing this case, the Québec Ombudsman ascertained that the Société failed to meet this particular obligation. No one at the Société had looked into the matter to determine whether or not this victim, who had stopped receiving the indemnity for care expenses, might be eligible to receive the income replacement indemnity. To do so, someone had to verify the victim's capacity to perform the tasks for the employment which the Société had determined for her on the 181st day, that of housekeeper.[6]

During the first months following the accident, a physician from the Bureau médical [Medical Office] had included a note in her file stating that if she chose to receive the income replacement indemnity, she would have to undergo rehabilitation due to the fact that the injuries she sustained to her shoulders would prevent her from performing her housekeeping duties. Clearly, if she was considered fit to care for her child, she was nonetheless still unfit to work as a housekeeper and could, as a result, be eligible for the income replacement indemnity.

5. *Automobile Insurance Act*, R.S.Q., c. A-25, section 82: "The Société shall, before the one hundred and eighty-first day following the accident, provide the victim with the assistance and information necessary to make an enlightened choice."

6. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.
   4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their application without further explanation.
   4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

The Québec Ombudsman intervened with the Société and the income replacement indemnity was authorized to be paid retroactively from October 1998.

Fearing that this might not be an isolated case, the Société proceeded to provide its compensation agents with a review of the regulations that they must follow.[7]

3.2.13.1.3.2 CONSULTATION DELAYS — ALWAYS A REASON!

On January 19, 1999, a citizen from a remote area was the victim of a road accident. He filed a request for compensation which the Société received on April 1, 1999. The first medical consultation had taken place on February 9 of the same year. On July 12, 1999, the Société refused to accept that there was any relationship between the accident and the injuries sustained, citing that the physical bodily injury described had surfaced long after the accident. The victim had, however, written to the Société on May 3, 1999 to explain why there had been a delay between the accident and the medical consultation and to mention that he had been unable to obtain an appointment with the physician before February 9, 1999. On July 17, 1999, he turned to the Québec Ombudsman for assistance.

Since the Société had not been satisfied with the victim's explanation, the Québec Ombudsman cited *An Act respecting administrative justice*[8] – which obligates the government administration to take appropriate measures to ensure that citizens are given the opportunity to provide any information useful in the decision-making process and, where necessary, to complete their file[9] – and then checked the victim's file for any missing information.

At the Québec Ombudsman's request, the victim then sent a letter from the physician to the Société confirming the reason for which he had been unable to consult him before February 9, 1999 and confirming the diagnosis given on the day of the consultation. The Société rendered a decision based on the explanations provided by the victim and his physician and acknowledged the relationship between the victim's injuries and the accident.

3.2.13.1.3.3 TEN YEARS TO HAVE HIS RIGHTS RECOGNIZED

The setbacks which this student suffered at the hands of the Société started only six months after his accident in December 1990 during which he suffered a head injury. The Société was of the opinion that the student was fit to resume his studies in June 1991 and that his problems were of a personal nature, and unrelated to the permanent bodily injuries that persisted after his accident.

In January 1999, the Administrative Tribunal of Québec acknowledged the relationship between the accident and the difficulties the student was experiencing in resuming his education, which reinstated the student's entitlement to a lump-sum indemnity for the loss of a school year until June 1992, "the date scheduled, at the time of the accident, for the completion of his current studies".

7. **The Social Contract**
   1. *Ensuring Government Transparency*
   1.2 Give citizens all the information they need in a timely manner.
   1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.
8. *An Act respecting administrative justice*, R.S.Q., c. J-3.
9. **The Social Contract**
   4. *Respecting the Rules of Natural Justice*
   4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

The Tribunal recognized that, as of that date, the claimant had suffered and continued to suffer from learning disabilities and, it returned the file to the Société so that the latter could rule on the student's right to receive an income replacement indemnity from June 1992.

The Société thus rendered a new decision: the student was awarded an income replacement indemnity from June 1992 to mid-January 1996. However, the Société claimed that if it deemed the student fit to return to school or work after this date, it would stop paying the indemnity. The student contested this decision.

The student's mother then provided the Bureau de révision with new documents explaining her son's current condition, but the reviewing agent maintained the initial decision. Would her son be forced to go back to the Administrative Tribunal of Québec in order to be adequately compensated?

The mother turned to the Québec Ombudsman for help because she felt that her son had been wronged by the Société's new decision. He had never been able to finish high school because of memory problems, difficulty concentrating and the fact that he was easily fatigued — common problems experienced by head-injury victims.

The Québec Ombudsman's investigation revealed that the student's right to an income replacement indemnity could be restored if the Société accepted that the extent of psychological impairment was sufficient to affect his future earning abilities. The Société evaluates these types of cases using a grid designed to measure an accident victim's loss of future earning ability. The Québec Ombudsman discovered that the only time the grid was used in this case was in 1994. At the time, it was found that the student's future earning ability would not be affected. However, over the previous six years, numerous medical documents had been added to the file — documents which provided just cause for the findings to be reviewed.[10]

The Québec Ombudsman asked the Société to rule anew on this major point and a neuropsychological medical evaluation was requested. When the Société received the results of the evaluation, it finally accepted the fact that the student was never able to return to school due to the effects of the accident. The Société therefore authorized the resumption of payment of the income replacement indemnity retroactively from mid-January 1996 and until an undetermined date.

3.2.13.2 HIGHWAY SAFETY

The Québec Ombudsman undertook 221 investigations relating to the *Highway Safety Code*[11] this year, an 18% reduction when compared to last year. Despite this, the rate of substantiated complaints remains at 18%. A strong percentage of justified complaints calls the reasonability of decisions rendered into question.

For instance, the *Highway Safety Code* states that the Société may require, in certain cases, that the holder of a driver's licence undergo a medical examination or health assessment. As such, it can suspend a driver's licence to ensure that the obligation to provide a medical report is met under certain conditions. A policy which outlines the criteria for applying the medical examination guides such discretionary power.

10. **The Social Contract**
    4. *Respecting the Rules of Natural Justice*
    4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.
    7. *Respecting Personal Dignity*
    7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

11. *Highway Safety Code*, R.S.Q., c. C-24.2

3.2.13.2.1.1 UNJUSTIFIED SUSPENSION OF A DRIVER'S LICENCE

A vehicle was stopped by a police officer and then seized because the driver did not hold a valid driver's licence. Wishing to recover his vehicle, the citizen was informed that his driver's licence was suspended because he had failed to submit a medical report required by the Société. He asked that the administration discharge the vehicle from seizure but the Société refused.

The Québec Ombudsman's investigation revealed that the Société had sent two letters to the citizen — one by priority post — to notify the latter of his obligation to provide a medical report. The letters were returned marked "unclaimed." However, the Québec Ombudsman noted that the request for a medical report was only applicable to the professional classes of the citizen's driver's licence. In other words, those particular classes which permit the citizen to drive a certain group of road vehicles including a bus, minibus, taxi, emergency vehicle or commercial vehicle.

At the time of his arrest, the citizen was driving a passenger vehicle. As far as the Québec Ombudsman is concerned, the Société should not have suspended the class of the licence which authorizes the driving of passenger vehicles. It could have simply suspended the professional classes until the citizen produced the required medical report.[12]

Recognizing this argument to be valid, the Société granted the discharge of the vehicle's seizure and did not claim payment for towing and storage charges.

3.2.13.2.1.2 WHO IS THE RIGHTFUL OWNER?

A citizen had an unpleasant surprise when he discovered that he was no longer the owner of a truck he had left at a garage to be repaired.

In fact, the garage owner had gone to the Société to have the vehicle transferred to his name as payment for the cost of the repairs. The flabbergasted citizen was informed that the garage owner had provided the documents required for a transfer of property. Doubtful of the legality of the transaction, the citizen contacted the Québec Ombudsman.

As part of its investigation, the Québec Ombudsman made sure that the Société had in fact asked for all of the required documents listed in the customer service handbook before

12. **Le Pacte social**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.
    5. ***Serving Citizens***
        5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.
    7. ***Respecting Personal Dignity***
        7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

transferring the registration of a vehicle abandoned by its owner at a garage or merchant and sold by the latter.

Two important documents had not been provided: the notice to the vehicle's owner stating that should he fail to claim his vehicle within 90 days, the garage owner would take possession of it, and proof that the notice had been served.

The property should therefore not have been transferred.[13]

Admitting its mistake, the Société sent a notice to the garage owner, based on section 5 of *An Act respecting administrative justice*,[14] granting him 15 days to produce the missing documents, without which ownership of the vehicle would be transferred to its original owner.

The garage owner was unable to provide the required documents and the citizen was thus able to recover his vehicle.

3.2.13.2.1.3 SETTLING OF ACCOUNTS

In November 1999, a police officer stopped a driver whose registration was not in order. The police officer also learned that the citizen did not hold a valid driver's licence. He therefore immediately seized the vehicle for 30 days. The citizen requested that the Société discharge her vehicle from seizure, but the latter refused. A few days before the end of the seizure period, the citizen also learned that she would no longer be considered the owner of the vehicle she had purchased the previous August. Seeking to understand the situation, the citizen approached the Québec Ombudsman.

After checking with the Société, the Québec Ombudsman learned that the vehicle actually belonged to the car salesman. In conflict with the citizen, the merchant had visited one of the Société's service centres the previous September in order to transfer ownership of the vehicle and ask that the latter be stored without the citizen's knowledge.

The investigation revealed irregularities in the documents that the merchant provided to the Société at the time of the last transfer of ownership: the citizen's signature did not appear on the attestation of transaction; the merchant's name appeared both as the seller and buyer of the car. This should have alerted the agent who handled the transaction.[15]

The Québec Ombudsman asked the Société to rectify the error by restoring the citizen's ownership right. It was also able to convince the Société to refund the excess storage charges paid by the citizen as a result of the time taken to put her file in order. Furthermore, the Société agreed to send a letter to the municipal court confirming its administrative error so that the statement of offence issued to the citizen could be withdrawn.

13. **The Social Contract**
    3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*
    3.1 Abide by special statutes and regulations as well as regular legislation.
14. *An Act respecting administrative justice*, R.S.Q., c. J-3.
15. **The Social Contract**
    4. *Respecting the Rules of Natural Justice*
    4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

3.2.13.2.1.4 BUREAUCRACY AT ITS BEST

A citizen was compensated by the Société for a car accident which took place in May 1997. When she moved in July 1998, she immediately notified her agent and provided the latter with her new address. In November, the citizen renewed her driver's licence at one of the Société's mandataries.

It wasn't until her vehicle was seized in January 1999 that the citizen learned that her licence had been suspended since September 1998 for medical reasons. She rushed to provide the Société with the required medical report and, still convinced that there had been some mistake, asked that her vehicle be discharged from seizure. The Société refused to comply. The citizen contested the Société's decision and asked the Québec Ombudsman to intervene.

During its investigation, the Québec Ombudsman was informed that the citizen had notified the Société of her change of address. However, this agency has many divisions headed by vice-chairmen which do not always share all the information on their respective client groups. Therefore, when the citizen gave her new address to her compensation agent, she was only informing the Vice-Chairman of Accident Victim Services and not the Vice-Chairman of Highway Safety, which is in charge of registration and licences.

The Vice-Chairman of Accident Victim Services regularly transmits medical information to the Vice-Chairman of Highway Safety. In fact, the Vice-Chairman of Highway Safety had asked the citizen to produce a medical report attesting to her ability to drive as a result of information which was transferred from the Vice-Chairman of Accident Victim Services. Since no change of address had been entered in the citizen's file, the request for a medical report and the notice of driver's licence suspension was sent to the citizen's old address.

The Société (Vice-Chairman of Highway Safety) obtained the citizen's new address when she renewed her driver's licence at the Société's mandatary. The agency then sent her a new notice of suspension by ordinary mail, this time failing to comply with its obligation to send this notice by registered mail, as provided for in the *Highway Safety Code*. The citizen claims that she never received the notice.

After examining the facts, the Québec Ombudsman concluded that the citizen could not have been expected to know that she had to give her address to many different entities of the same agency, especially since the *Highway Safety Code* only mentions that citizens are obligated to notify the Société of their new address within 30 days.[16]

16. **The Social Contract**
    1. ***Ensuring Government Transparency***
        1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.
        1.2 Give citizens all the information they need in a timely manner.
    2. ***Promoting Access to Government Services***
        2.7 Seek to provide one-stop service and, as needed, consider amalgamating administrative divisions, if this can contribute to improving client accessibility and service quality. On the other hand, do not at all costs maintain an operation or unit of questionable relevance.
    5. ***Serving Citizens***
        5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

The Québec Ombudsman therefore recommended that the Société review its decision and discharge the vehicle from seizure. It also recommended that the Société reimburse the citizen for any costs incurred. The Société agreed with the Québec Ombudsman and compensated the citizen.

Moreover, the Québec Ombudsman secured a change to administrative practice so that citizens renewing their driver's licence — whether at one of the Société's mandataries or service outlets — would now be notified that their licence had been suspended. From now on, citizens will be asked to sign a form confirming that they have been informed of the suspension. The Québec Ombudsman also suggested that the Société examine the feasibility of sharing change of address information among divisions.

The Société is currently experiencing computer problems which prevent it from transferring this type of information between the Vice-Chairman of Accident Victim Services and the Vice-Chairman of Highway Safety. The Québec Ombudsman is monitoring this case.

3.2.13.2.1.5 A DOUBLE STANDARD

A handicapped citizen contested the amount awarded to him by the Société in order to adapt his vehicle. The estimated cost for adapting his vehicle was $30,000, whereas the Société's program only provided for a maximum of $22,000. This meant that the citizen would have to pay $8,000 in order to be able to safely drive his car. If his handicap had been the result of a road accident, he would not have had to pay a cent since there is no maximum amount disbursed for adapting vehicles in this case. Feeling that he had been wronged, the citizen approached the Québec Ombudsman.

Since July 1, 1997, the Société has administered the Adaptation of Vehicles program, formerly administered by the Office des personnes handicapées du Québec. The Société, however, already had a vehicle adaptation program for road accident victims under the terms of the automobile insurance plan. This program — more generous than the one intended for other handicapped individuals — mainly consisted of a subsidy for material assistance.

The Québec Ombudsman moved to support those who demanded an end to the disparities between two programs with the same purpose: to promote the autonomy of handicapped persons when using a vehicle. The recommendations were accepted and the measure serving to abolish the maximum amount came into force on January 1, 2000.[17]

3.2.13.2.1.6 FLAWED ADMINISTRATIVE PROCEDURES

The Société creates a client account for any citizen with amounts owing. This way, if the citizen requires a service from the Société, he must first pay his debt.

The Société also implemented a procedure to ensure that a citizen does not pay twice for a service just because his pay-

17. **The Social Contract**
    5. *Serving Citizens*
    5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.
    5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

ment has not yet appeared in his file. To prevent double payment, the citizen must provide proof of payment. The Société employee then registers the payment and temporarily clears the client account. Sometimes, however, mistakes are made.

3.2.13.2.1.7 REMINDING EMPLOYEES OF PROCEDURES

A citizen sent a cheque to the Société on September 17, 1999, in order to renew the registration of his two vehicles which was to expire on September 30, 1999.

Upon updating his bankbook on October 1, 1999, the citizen noticed that the Société had not yet cashed his cheque. He therefore went to a service outlet to make sure that he was legally allowed to drive his car.

The agent on hand informed the citizen that if he wished to avoid getting a ticket, he had to immediately pay to register his vehicles. The citizen accepted without question, especially since he was told that his first cheque would be returned to him. Despite this promise, the Société cashed the citizen's cheque a few days later. When the citizen informed the Société of their mistake, he was told that he would have to wait at least five weeks before receiving his $550 refund. Dissatisfied, the citizen asked the Québec Ombudsman to intervene.

The Québec Ombudsman discovered that the Société had recently implemented a procedure for eliminating these kinds of problems. In fact, the Société now required that client accounts be cleared until cheques are cashed.

The Québec Ombudsman recommended that the Société review procedure with its staff and that the citizen be reimbursed immediately upon presentation of his bankbook.

The Société accepted.[18]

3.2.13.2.1.8 FORGET, AND SUFFER THE CONSEQUENCES

A citizen lent one of her two cars to her father. Three days later, a police officer stopped the latter and observed that his driver's licence was not valid. The police officer therefore seized the vehicle for a 30-day period as provided for in the *Highway Safety Code*. The father did not inform his daughter that the car had been seized.

The same day, the Société sent the citizen a letter by ordinary mail, informing her that the vehicle had been seized. The citizen claimed that she never received this notice. Two months later, a bailiff informed her that her vehicle would be sold unless she paid $816. The citizen recovered her car after paying the amount required by the Public Curator, which was in possession of her vehicle. Feeling that she had been wronged, the citizen contacted the Québec Ombudsman.

The investigation showed that the Société had not respected the requirements of the *Highway Safety Code* which states that vehicle seizure notices must be sent by priority post. The Québec Ombudsman recommended that the Société comply

18. **The Social Contract**
5. *Serving Citizens*
5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

with the provisions of the *Highway Safety Code* for all vehicle seizure notices sent to citizens.[19] The Société accepted this recommendation.

In fact, the Société refunded the citizen the cost for storing her vehicle after the initial 30-day seizure period as well as the payment required by the Public Curator.

19. **The Social Contract**
    3. ***Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable***
        3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.
    5. ***Serving Citizens***
        5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

4

THE QUÉBEC OMBUDSMAN'S PUBLIC AND MEDIA RELATIONS

4

THE QUÉBEC OMBUDSMAN'S PUBLIC AND MEDIA RELATIONS

Faithful to its policy of transparency, this year the Québec Ombudsman again assigned significant importance to public and media relations. Whether to promote the institution or to throw new light on current issues — particularly on the publication of its special reports — the institution readily made itself available to promptly answer journalists' diverse questions, aware of the determining role the media plays in public information and opinion.

Over the year 1999–2000, the Québec Ombudsman granted more than ten interviews to the print and the electronic media in public affairs broadcasts and reports as well as at press conferences on the tabling of special reports and the annual report.

Mindful of keeping the public well-informed of the existence and the mission of the institution, the Québec Ombudsman participated in more than twenty awareness-raising and information events, in the form of colloquia, forums and conventions organized by socio-community agencies in Québec. Specifically, he delivered addresses for the Centre d'action bénévole Émilie-Gamelin de Joliette, La Maisonnée immigration centre in Montréal, and the Granby chapter of les Clubs d'administration du Canada. In addition, he was the honorary president for the 30th anniversary of the Musée de la mer in Îles-de-la-Madeleine and for the 7th Salon des organismes socio-communautaires de la région de Québec (a convention for Québec City region socio-community agencies). For the second consecutive year, he also participated in the Salon des ainés de Québec, which annually attracts some 60,000 visitors. Since seniors and the young retired make up an increasingly large proportion of Québec's population, this public relations event provided an interesting venue for promoting the role and the services of the Québec Ombudsman among this client group.

In the role of supervisor, but also of collaborator with the public administration, the Québec Ombudsman met with members of the Association des responsables de la gestion des plaintes du gouvernement du Québec as part of a day of discussion, as well as with high-level administrators of the ministère de l'Environnement. He participated in the third Journées annuelles de santé publique, which brought together professionals from the health and social services network for the development of draft legislation on public health. He also addressed the members of the Conseil de la justice civile during a one-day training session on the theme of "Les

attentes des justiciables vis-à-vis la justice administrative."

He also participated in the Canada-wide conference "Les Grands Sommets de la Santé 2000," which dealt with the concerns and the issues that are shaping up in this troubled sector, and addressed the members of The Association of Canadian College and University Ombudsmen at their annual meeting.

Mindful of the institution's accessibility and the promotion of its services, the Québec Ombudsman proceeded with the overhaul of its Web site: a new presentation with better identified and defined sections allows for easier navigation and faster search access to the information. Following the launch, a Web site campaign was conducted among MNAs, departments and agencies of the Government of Québec, colleges and universities, community agencies and the Québec media, inviting them to visit the Québec Ombudsman's new site.

Through such public activities, the Québec Ombudsman pursues one and the same goal: to widen knowledge of the institution and its mandate as well as the resources available to citizens who are victims of errors and injustices committed by the Québec government system. Such a pursuit is part of its *raison d'être*.

5

CONTRIBUTION OF THE QUÉBEC OMBUDSMAN TO THE DEVELOPMENT OF THE RULE OF LAW IN THE INTERNATIONAL COMMUNITY

5

CONTRIBUTION OF THE QUÉBEC OMBUDSMAN TO THE DEVELOPMENT OF THE RULE OF LAW IN THE INTERNATIONAL COMMUNITY

The Québec Ombudsman participates, as do many of its counterparts, in maintaining and reinforcing the rule of law, thereby contributing to the rise of democracy, and to the promotion and the defence of human rights.

The recognition of the dignity of the individual is the cornerstone of rights and freedoms. No society can claim to be civilized if it does not protect human dignity. How is the value of a right to be assessed, if not in practice? Its enshrinement in documents, however constitutional they might be, is inadequate. Thus the implantation of mechanisms to monitor the application of human rights, such as ombudsmen's institutions, is an imperative.

The Québec Ombudsman is an institution that is recognized around the world for its professionalism, its contribution to the development of the rule of law and the quality of its interventions in international cooperation.

Over the course of recent years, the Québec Ombudsman has accepted first-order responsibilities. Since 1996, he has been Secretary of the International Ombudsman Institute, and since 1998 he has been chair of the Association of Ombudsmen and Mediators of French-Speaking Countries and vice-chair of the Canadian Ombudsmen Association, founded the same year.

These three professional associations pursue the same objectives: promote the concept of Ombudsman, support existing institutions, train staff, foster research and disseminate information.

5.1 INTERNATIONAL OMBUDSMAN INSTITUTE

Founded in 1978, the International Ombudsman Institute is a world-wide organization of ombudsmen, and currently comprises 237 members. Its head office is located at the University of Alberta in Edmonton. Its Board of Directors meets yearly and a conference of members is held every four years. This year the conference will be held in Durban, South Africa in November 2000.

5.2 ASSOCIATION OF OMBUDSMEN AND MEDIATORS OF FRENCH-SPEAKING COUNTRIES

The Association of Ombudsmen and Mediators of French-Speaking Countries is an international umbrella organization uniting ombudsmen and mediators from the French-speaking world. It has offices in Paris and in Québec City and currently comprises 24 members. It was founded at the initiative of the Médiateur de la République française and the Québec Ombudsman in 1997, with the collaboration of the Government of Québec and the Agence de la Francophonie. The Association's Board of Directors meets annually, this year in Bucharest, Romania, and a member's conference is held every two years. The Principauté d'Andorre will host the next conference in 2001.

5.3 CANADIAN OMBUDSMEN ASSOCIATION

Although Canadian legislative ombudsmen have met annually for the past 25 years, the Canadian Ombudsmen Association was only established in 1998. Comprising 163 members, the Association's head office is located in Toronto, Ontario. The Board of Directors holds its annual meeting at the members' conference. Québec City will host the next conference in the autumn of 2001.

5.4 INTERNATIONAL RELATIONS S

Several national and regional ombudsmen's associations exist world-wide, as well as organizations that bring together ombudsmen working in specific sectors. They contribute to the development of ombudsmen's institutions, to the promotion of human rights, as well as to the protection of citizens' rights with respect to public administrations and sometimes, the private sector. This international community of ombudsmen cannot work to maintain and strengthen its existence without the effective cooperation of its members.

5.5 QUÉBEC'S ROLE IN INTERNATIONAL COOPERATION AND THE PROMOTION OF HUMAN RIGHTS

Since the meeting of Justice ministers in Cairo in 1995, the Hanoi Summit in 1997, and Moncton Summit in 1999, Québec has participated more extensively in the development of the rule of law, in the protection of human rights and in the promotion of institutions dedicated to the protection of rights.

The Québec Ombudsman is thus often associated with the activities of the ministère des Relations internationales, as for instance his recent participation in the Programme d'appui à la démocratie et aux droits de la personne in Benin in 1999.

Canada and Québec have adhered for many years to international protocols on human rights, and through legislation, they put in place the objectives of such international instruments. The Government of Québec fulfills its commitments through the ministère des Relations internationales and also through the specific activities of its departments and agencies.

The Québec Ombudsman, acting as an independent public authority, also assumes the international obligations which are incumbent on this institution. It contributes in part to this effort directly from its budgets, in the same capacity as the Government of Québec, the National Assembly and the departments and agencies of the government.

The Québec Ombudsman has always cooperated internationally by providing assistance to staff training in Ombudsman offices or by travelling on site to provide support, particularly in developing countries and countries in transition to democracy. He also participates in the activities of ombudsmen's associations of which he is a member.

5.6 MAIN ACTIVITIES OF THE QUÉBEC OMBUDSMAN IN 1999–2000

In February 1999, the Québec Ombudsman participated in a meeting held in Ouagadougou, Burkina, to prepare the next conference of the Association of Ombudsmen and Mediators of French-Speaking Countries, in addition to taking part in a meeting of the Association's Board of Directors.

At his Montréal offices, he met Mr. José Gregori, the Secretary of Human Rights of Brazil, as part of a mission organized by the University of Ottawa's Human Rights Research and Education Centre.

In May 1999, he participated in the 4th Conference of ombudsmen of Asia in Teheran, Iran, on the invitation of Mr. Sayyid Ebrahim Ra'iesee, Head of the General Inspection Organization of Iran.

As part of his responsibilities as Secretary of the International Ombudsman Institute, the Québec Ombudsman hosted Mr. Dean Gottehrer, an international consultant, in Québec City in July 1999. Mr. Gottehrer has advised several governments in the creation of ombudsmen's institutions and human rights commissions.

In August 1999, a meeting of the Executive Committee of the International Ombudsman Institute was held in Québec City. In attendance were then Vice-President Sir Brian Elwood, Ombudsman of New Zealand, the Treasurer, Mr. Lewis Klar, Dean of the Faculty of Law of the University of Alberta, the office Director, Ms. Diane Callan, and the Québec Ombudsman's collaborators in charge of international affairs, Ms. Dominique Bouchard and Mr. André Sasseville.

In September 1999, in Saskatoon, Saskatchewan, Mr. Denis Langlois, delegated by the Québec Ombudsman, delivered an address entitled "To Punish Differently: from affirmation to action" at the conference Punishment at the Turn of the Twentieth Century: Finding a Common Ground, organised by the Canadian Institute for the Administration of Justice. The invitation, addressed to the Québec Ombudsman, followed up his report on correctional services that was released in January 1999.

In October 1999, the Québec Ombudsman participated in the joint conference of the Canadian Ombudsmen Association and the United States Ombudsmen Association in Victoria, British Columbia. On this occasion, he also participated in the congress of the North American Chapter of

the International Ombudsman Institute. During the same month, he greeted Professor Bertram Bastiampillai, Ombudsman of Sri Lanka, Ms. Saku Srighanthan and Ms. Robin Wentzell of the University of Ottawa's Human Rights Research and Education Centre, to prepare a training session for the employees of the Ombudsman of Sri Lanka.

This training took place from May 15 to June 30, 2000 in Colombo, Sri Lanka, as part of the Good Governance and Institutional Strengthening project of the University of Ottawa's Human Rights Research and Education Centre. During his stay, Mr. Denis Langlois, delegate of the Québec Ombudsman, taught investigative techniques and case management to the employees of the Sri Lanka Ombudsman, in addition to participating in workshops of the public service training office.

In November 1999, the Québec Ombudsman participated in the annual meeting of the Board of Directors of the International Ombudsman Institute in Pretoria, South Africa. He also took part in the first statutory convention of the Association of Ombudsmen and Mediators of French-Speaking Countries in Ouagadougou, Burkina, where he made the opening and closing addresses, in addition to chairing the meeting of the general assembly and that of the board of directors.

In January 2000, in response to the invitation of the Fédération internationale des droits de la personne, Mr. Denis Langlois, delegated by the Québec Ombudsman, attended, as an observer, a regional conference on the prison situation in Andean regions in Ecuador. He also participated in a mission of international observers on the situation of Ecuadorian prisoners.

In February 2000, the Québec Ombudsman was the guest of honour at the annual convention of the Institut européen des Ombudsmans, held in the Valle d'Aosta region. As Secretary of the of the International Ombudsman Institute and the chair of the Association of Ombudsmen and Mediators of French-Speaking Countries, he spoke with delegates about possible links with supranational and international organizations dedicated to the development of "Ombudsmanship" and to the protection of citizens' rights. He then travelled to Paris where he met with representatives of the Agence de la Francophonie to discuss the Association of Ombudsmen and Mediators of French-Speaking Countries.

In March 2000 in N'Djamena, Chad, he participated in the preparatory workshop for the Symposium on "Democratic Institutions and the Rule of Law" which was held in November 2000 in Bamako, Mali. The conference theme was

"Les ombudsmédiateurs : dix ans d'évolution, dix ans de transformation". The conclusions of the sessions of this workshop will be included in the general report that will be submitted to the international Symposium in Bamako.

In April 2000 in Montréal, he hosted, in collaboration with Québec Superior Court, a delegation of judges from the People's Republic of China as part of judges' training program. He also greeted a delegation from South Korea, directed by the Deputy Ombudsman of South Korea, and comprising representatives of the Prime Minister's cabinet and various departments. This meeting was part of the Korean foreign training program and was carried out in collaboration with the Parliamentary Centre of Canada and the ministère des Relations internationales.

Also in April 2000, the Conseil consultatif des droits de l'Homme (International Consultative Committee of Human Rights) invited the Québec Ombudsman to the Fifth International Meeting of the National Institutions for the Promotion and Protection of Human Rights in Rabat, Morocco. Although unable to attend this meeting, he nevertheless submitted the text of his speech, entitled "The Ombudsman: in Québec and Throughout the World," which is available on the Québec Ombudsman's Web site.

In May 2000, in conjunction with the Parliamentary Centre of Canada and the bureau du Protocole des Affaires interparlementaires du Québec, the Québec Ombudsman hosted a delegation of seven parliamentarians and high-ranking public servants of the People's Republic of China within the framework of a mission of familiarization with Canadian practices of public consultation..

In June 2000, in San Francisco, United States, the Québec Ombudsman and his deputy participated in the "Second Ombudsman Leadership Forum Conference" which brought together ombudsmen of North America. He gave a speech entitled "Developing recommendations and getting them adopted". The Québec Deputy Ombudsman gave two speeches: "Travailler avec des personnes vulnérables" (Working with vulnerable people) and "Complaints Against U's. Is it possible?" Moreover, during a meeting with representatives of North American ombudsmen's associations, the Québec Ombudsman proposed Québec City's candidacy to host the next Superconference in 2004. It should be noted that the candidacy was prepared in close collaboration with the Centre des congrès de Québec (Québec City Convention Centre). Also as part of this conference, he participated in the annual meeting of the North-American regional constituency of the International Ombudsman Institute, as well as in the general assembly of the Canadian Ombudsmen Association.

In collaboration with the École nationale d'administration publique and the Parliamentary Centre of Canada, in June 2000, the Québec Ombudsman hosted a delegation of Bulgarian parliamentarians who had come to study Canadian institutions strengthening government accountability. This meeting, registered as part of a Parliamentary Centre of Canada project, aims to create an Ombudsman Institute in Bulgaria.

5.7 DISTRIBUTION OF THE *ANNUAL REPORT* AND *THE SOCIAL CONTRACT*

The Québec Ombudsman's Annual Report is published in French and in English, and in addition to its distribution in Québec and the rest of Canada, is provided to ombudsmen, libraries and associations around the world.

The Social Contract, proposed by the Québec Ombudsman to improve relations between the government administration and citizens, is distributed around the world and is available in four languages: French, English, Spanish and Thai.

5.8 INTERNATIONAL ADDRESSES

The Association des Ombudsmans et Médiateurs de la Francophonie, the International Ombudsman Institute and the Canadian Ombudsmen Association may be reached at the following addresses:

5.8.1 ASSOCIATION DES OMBUDSMANS ET MÉDIATEURS DE LA FRANCOPHONIE

Le Médiateur de la République
53, avenue d'Iéna
75116 Paris, France
Tel: 33 1 45 02 7272
Fax: 33 1 45 00 4791
E-mail: aomf@mediateur-de-la-republique.fr

Le Protecteur du citoyen
525, boul. René-Lévesque Est, bur. 1.25
Québec (Québec) Canada G1R 5Y4
Tel: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

5.8.2 INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

Suite 205 D, Weir Librairy
Faculty of Law, University of Alberta
Edmonton, Alberta, Canada T6G 2H5
Tel: (780) 492 3196
Fax: (780) 492 4924
E-mail: callan@law.ualberta.ca
lreif@law.ualberta.ca
Web site: www.law.ualberta.ca

Secretary of the IOI
525, boul. René-Lévesque Est, bur. 1.25
Québec (Québec) Canada G1R 5Y4
Tel: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

5.8.3 CANADIAN OMBUDSMEN ASSOCIATION (COA)

AOC/COA
c/o of the Ontario Commissioner of The Environment
1075, Bay Street, Suite 605
Toronto, Ontario, Canada M5S 2B1

Le Protecteur du citoyen
525, boul. René-Lévesque Est, bur. 1.25
Québec (Québec) Canada G1R 5Y4
Tel: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

6

ADMINISTRATIVE DATAS

6.1

THE BUDGET OF THE QUÉBEC OMBUDSMAN

COMPARATIVE EXPENDITURE STATEMENT FOR THE 1999 AND 2000 FISCAL YEARS ENDED MARCH 31

	1998-1999	1999-2000
Staff		
Regular and temporary employees	3,851,819	4,139,297
Employer's contributions	371,827	408,267
Pensions for former ombudsmen and assistants	72,050	91,629
Total	**4,295,696**	**4,639,193**
Operations		
Transportation and communications	374,726	440,050
Professional and administrative services	140,961	160,599
Maintenance and repairs	15,128	28,249
Rent and rental fees	568,001	816,426
Goods and supplies	79,205	73,561
Material et equipment	80,643	12,449
Amortization	–	51,407
Other expenditures	4,549	2,915
Total	**1,263,213**	**1,585,656**
Capitalization		
Computer technology development	–	218,824
Material and equipment	45,188	7,980
Total	**45,188**	**226,804**
Grand total	**5,604,097**	**6,451,653**

6.2

QUÉBEC OMBUDSMAN STAFF

	1998-1999	1999-2000
Special appointments	2	2
Senior managers	5	5
Middle managers	10	11
Professionals	27	29
Technicians	17	20
Support staff	17	15
Casual employees - full-time	4	2
Casuals employees - part-time	-	-
Total employees/year	**82**	**84**

6.3 Ombudsman Staff during 1999-2000 Fiscal Year

Pierre Alarie
Lydya Assayag
Jacques L. Auger
Claire Beaupré
Jean-Pierre Bédard
Marcel Bégin
Claude Bélanger
Ann Bergeron
France Blackburn
Chantal Blais
Yves M. Bolduc
Dominique Bouchard
Pascal Bouffard
Annie Boulanger
Josée Boulianne
François Bourget
Danielle Bouthillette
Andrée Boutin
Jo-Anne Bussières
Mariette Cailloux
Madeleine Cayer-Rousseau
Dany Chamard
Maude Chartier
Lyne Chassé
Linda Cheng
Sylvie Clément
Georgette Couture
André Daguerre
Lyne Deschênes
Johanne C. Desjardins
Diane Dubuc-Hickey
Francine Dufour
Marie-Josée Dufour
Suzanne Duguay
Louise Falardeau
Berthe Fournier
Lucie Gagnon
Suzanne Gagnon
Christine Gauguin
Alain Gauthier
Claire Gendron
Brigitte Genest
Pierre-Paul Gervais
Dorys Gosselin
Robert Guay
Pascal Héon
Thérèse Houle
Frances Hudon-Szigeti
Daniel Jacoby
Denise Labelle
Serge Laberge
Michel Labonté
Martine Laliberté
Micheline Lamy
Claire Langlois
Denis Langlois
Nathalie Laquerre
Francine Larouche
Francyne Larouche
Lucie Lavoie
Michèle Lessard
Lucie Levac
Gaétan Levasseur
Marlène Lirette
Micheline Lynch
Guy MacDonald
Lise Mayer
Micheline McNicoll
Jacques Meunier
Pierre Morin
Lorraine Nadeau
Annie Noël
Margaret Normand
Egidio Nunez
Manon Ostiguy
Guy Pagé
Louise Paquette
Marie-José Péloquin
David Perron
Suzanne Picard
Sonia Piché
Diane Pilon
Patrick Plante
Lucie Poulin
France Prévost
Anne-Marie Racette
Sophie Rioux
Claude Rivard
Patrick Robardet
Fernande Rousseau
Hélène Roux
Daniel Samson
André Sasseville
Nelly Savard
Monique Sévigny
Gaétane Sinclair
Gilles St-Hilaire
Linda Sweeney
Suzanne Talbot
Armenia Teixeira
Danielle Therrien
Mona Tremblay
Jonathan Turcotte
Sylvie Turcotte
Alexandre Verdy
Georges Wentser
Michael Wojcik

6.4

PROTECTION OF PERSONAL INFORMATION

On May 12, 1999, the Conseil des ministres adopted the governmental action plan on the protection of personal information. The plan aims to ensure improved follow-up on the recommendations of the Commission d'accès à l'information and is intended to be a process of integration of the protection of personal information in the managerial culture of departments and agencies.

The governmental action plan stipulates that all departments and agencies shall proceed with an annual evaluation of the level of protection of personal information and render a summary in their annual reports.

CREATION OF THE COMMITTEE ON PROTECTION OF PERSONAL INFORMATION

This committee, presided by the Québec Ombudsman, brings together:

- The person in charge of access to documents and the protection of personal information;
- The director of administration and human resources and his two assistants (material resources and human resources);
- The director of information technology/computer services;
- The person in charge of documentary resources;
- The person in charge of "health and security" at the Montréal office.

The Committee on the protection of personal information has adopted a plan of action based on the following major guidelines:

- Follow-up and updating of the recommendations of the Commission d'accès à l'information;
- Review and updating of all the policies and guidelines concerning the protection of personal information (eg.: fax and e-mail use; transmission of personal data documents; security of the workplace facilities, document management and archiving...);
- Information and awareness raising among all personal information protection staff;
- Review of declarations of files, access profiles and access procedures;
- Monitoring projects aimed at developing or implanting a technology or a procedure likely to affect the protection of personal information.

AWARENESS-RAISING AND TRAINING ACTIVITIES IN PROGRESS

Updating the knowledge of personal information protection among employees occupying positions of management, team leader or immediate supervisor.

- Recall of the rules governing the use of the fax and reformulation of the message on confidentiality;
- Integration of personal information protection in the training of contractual staff (eg.: articling students);
- Review of service contract models.

PRIORITIES FOR ACTION IN 2000–2001

- Review of declarations on files containing personal data, access profiles and access procedures;
- Information and awareness-raising activities for all staff involved in the protection of personal information. These activities will be based on the development of a daily ethics of personal information protection and on our responsibilities with respect to the population that requires the services of the Québec Ombudsman.

6.5

APPLICATION OF THE *ACT RESPECTING NON-SMOKERS* IN CERTAIN PUBLIC PLACES

During the 1999–2000 fiscal year, the Québec Ombudsman ensured application of the *Act respecting Non-Smokers*. No complaints were filed and no infraction notices were issued.

6.6

STATISTICS

General Explanation

Figure 1 shows the evolution of consultations and complaints addressed to the Québec Ombudsman since the creation of the institution.

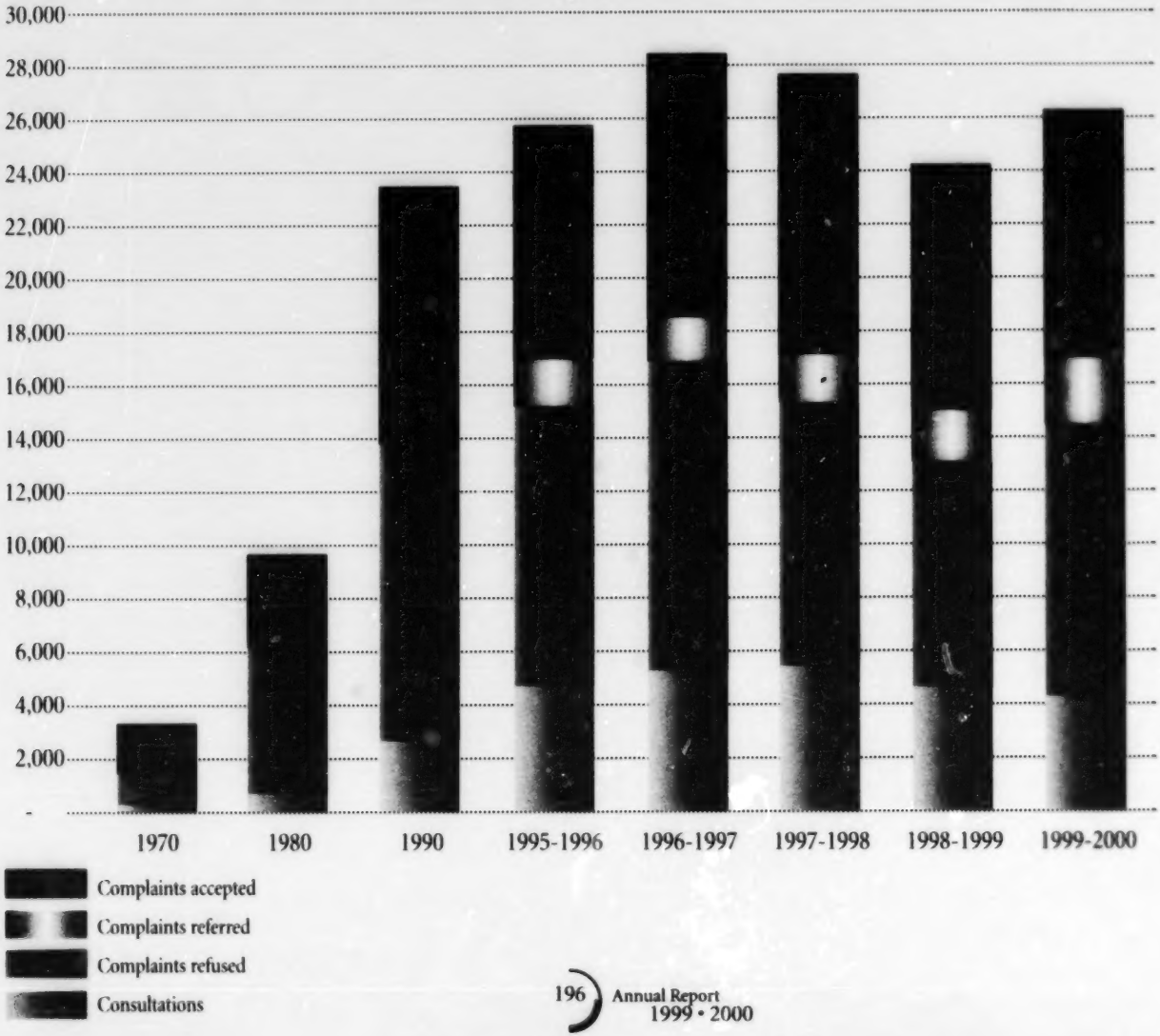
Tables 1 to 4 deal exclusively with consultations and complaints received during the course of one fiscal year, whereas tables 5 to 7 and figures 2 and 3 also include consultations and complaints under investigation before April 1.

Tables 1 to 4 and Table 6 present data for the fiscal years 1998-1999 and 1999–2000 for the purposes of comparison. Tables 5 and 7 as well as figures 2 and 3 deal exclusively with the fiscal year 1999–2000.

6.6.1

FIGURE 1

COMPLAINT AND CONSULTATION LEVELS



6.6.2

TABLE 1

ORIGIN OF COMPLAINTS AND CONSULTATIONS BY REGION

Region	Population[1]		1998-1999		1999-2000	
	No	%	No	%	No	%
Abitibi-Témiscamingue (08)	156,619	2.1	414	1.7	451	1.7
Bas-Saint-Laurent (01)	208,053	2.8	694	2.8	795	3.0
Centre-du-Québec (17)	220,845	3.0	418	1.7	431	1.6
Chaudière–Appalaches (12)	389,666	5.3	896	3.7	1,006	3.8
Côte-Nord (09)	105,109	1.4	357	1.5	353	1.3
Estrie (05)	287,951	3.9	834	3.4	969	3.7
Gaspésie–Îles-de-la-Madeleine (11)	105,343	1.4	262	1.1	340	1.3
Lanaudière (14)	392,284	5.3	1,048	4.3	1,081	4.1
Laurentides (15)	456,347	6.2	1,685	6.9	1,714	6.5
Laval (13)	342,421	4.7	909	3.7	901	3.4
Mauricie (04)	265,378	3.6	1,026	4.2	1,132	4.3
Montérégie (16)	1,303,241	17.8	3,111	12.8	3,160	12.0
Montréal (06)	1,806,754	24.6	7,483	30.7	7,664	29.2
Nord-du-Québec (10)	39,996	0.5	27	0.1	41	0.2
Outaouais (07)	317,544	4.3	799	3.3	741	2.8
Québec (03)	646,091	8.8	3,603	14.8	4,527	17.2
Saguenay–Lac-Saint-Jean (02)	289,641	3.9	693	2.8	784	3.0
From outside Québec	...	...	125	0.5	119	0.5
Unknown	...	...	12	--	49	0.2
Total	**7,333,283**		**24,396**		**26,258**	

1. Statistics Canada, *Estimated population 1999*.

6.6.3

TABLE 2

SERVICE TIMES

	1998-1999		1999-2000	
	No	%	No	%
Consultations				
The same day	3,456	74	3,814	89
Within a week	4,378	93	4,203	98
Total	**4,683**		**4,275**	
Complaints Refused				
The same day	7,342	85	8,096	78
Within a week	8,332	97	9,992	96
Within a month	8,529	99	10,340	99
Within three months	8,588	99	10,373	99
Total	**8,596**		**10,396**	
Complaints Referred	**1,707**	...	**2,317**	...
Investigations Interrupted and Complaints Withdrawn by Ccitizens	**1,553**	...	**1,453**	...
Investigations Completed				
Within a week	4,256	63	4,459	65
Within a month	5,483	81	5,590	82
Within three months	6,320	94	6,130	90
Within six months	6,643	98	6,432	94
Total	**6,755**		**6,810**	
Complaints Being Processed at the End of the Fiscal Year	**1,102**	...	**1,007**	...
Grand total	**24,396**		**26,258**	

6.6.4

TABLE 3

CONSULTATIONS BY SUBJECT AREA

	1998-1999		1999-2000	
	No	%	No	%
Government of Québec departments and agencies	1,586	34	1,361	32
Government organizations not under the jurisdiction of the Québec Ombudsman	186	4	198	5
School system	28	1	45	1
Health and social services network	163	3	206	5
Municipalities	167	4	180	4
Federal departments and agencies, and those of other provinces	172	4	142	3
Private sector	2,368	51	2,100	49
Other	13	--	43	1
Total	**4,683**		**4,275**	

6.6.5

TABLEAU 4

COMPLAINTS REFUSED BY SUBJECT AREA

	1998-1999		1999-2000	
	No	%	No	%
Government organizations not under the jurisdiction of the Québec Ombudsman	895	10	778	7
School system	143	2	182	2
Health and social services network	630	7	970	9
Municipalities	473	6	558	5
Federal departments and agencies, and those of other provinces	813	9	743	7
Private sector	2,733	32	4,518	43
Politicians and judges	436	5	483	5
Other adequate resources available	879	10	720	7
Interventions deemed unnecessary	1,432	17	1,342	13
Other	162	2	102	1
Total	**8,596**		**10,396**	

6.6.6

TABLE 5

DEPARTMENTS AND AGENCIES TARGETED IN 1999-2000[1]

	Unsubstantiated complaints	Substantiated complaints	Other[2]	Complaints under investigation as of March 31, 2000	Total
Departments					
Affaires municipales et Métropole	4	-	7	27	38
Agriculture, Pêcheries et Alimentation	15	12	5	12	44
Assemblée nationale	-	-	-	1	1
Conseil du trésor (Secrétariat du)	4	2	14	3	23
Conseil exécutif	-	-	1	-	1
Culture et Communications	-	1	1	5	7
Éducation	264	91	275	157	787
Environnement	20	14	28	41	103
Famille et Enfance	12	9	29	53	103
Finances	2	3	8	2	15
Industrie et Commerce	3	1	1	1	6
Justice	73	21	99	21	214
Régions	-	-	-	1	1
Relations avec les citoyens et Immigration	28	-	66	58	152
Relations internationales	-	-	2	2	4
Ressources naturelles	7	4	22	13	46
Revenu	715	695	1,010	179	2,599
Santé et Services sociaux	6	8	43	49	106
Sécurité publique	1,319	658	1,835	179	3,984
Solidarité sociale	1,591	227	2,052	148	4,018
Transports	19	6	38	9	72
Travail	7	2	13	1	23

1. Including complaints and consultation under way before and during the 1999-2000 year, they were completed during the year or they were still under investigation on March 31, 2000.
2. Consultations,complaints referred, complaints refused, investigations interrupted, and complaints withdrawn by the citizen in question.

TABLE 5 (continued)

DEPARTMENTS AND AGENCIES TARGETED IN 1999-2000[1]

	Unsubstantiated complaints	Substantiated complaints	Other[2]	Complaints under investigation as of March 31, 2000	Total
Committees					
Comité de déontologie policière	3	-	3	-	6
Commissioners					
Commissaire à la déontologie policière	14	1	11	2	28
Boards (Commissions)					
Commission administrative des régimes de retraite et d'assurances	32	11	21	10	74
Commission d'accès à l'information	8	3	7	10	28
Commission de la fonction publique	1	-	5	1	7
Commission de la santé et de la sécurité du travail	211	157	894	187	1,449
Commission de protection de la langue française	-	-	-	10	10
Commission de protection du territoire agricole	5	-	8	1	14
Commission de toponymie	-	1	-	-	1
Commission des affaires sociales	-	-	-	1	1
Commission des lésions professionnelles	4	3	71	4	82
Commission des normes du travail	41	6	41	10	98
Commission des transports du Québec	-	1	4	-	5
Commission des valeurs mobilières du Québec	1	-	5	5	11
Commission municipale du Québec	-	-	-	1	1
Commission des libérations conditionnelles	34	12	21	2	69
Councils					
Conseil de la magistrature	-	-	3	-	3
Institutions					
Curateur public	125	55	78	67	325
Inspecteur général des institutions financières	15	4	18	5	42

1. Including complaints and consultation under way before and during the 1999-2000 year, they were completed during the year or they were still under investigation on March 31, 2000.
2. Consultations,complaints referred, complaints refused, investigations interrupted, and complaints withdrawn by the citizen in question.

TABLE 5 (continued)

DEPARTMENTS AND AGENCIES TARGETED IN 1999-2000[1]

	Unsubstantiated complaints	Substantiated complaints	Other[2]	Complaints under investigation as of March 31, 2000	Total
Offices					
Office de la langue française	-	-	2	1	3
Office de la protection du consommateur	7	-	6	-	13
Office des personnes handicapées du Québec	2	1	3	2	8
Office des professions du Québec	1	-	3	1	5
Boards (Régies)					
Régie de l'assurance maladie du Québec	149	30	39	20	238
Régie des alcools, des courses et des jeux	6	8	6	-	20
Régie des assurances agricoles du Québec	3	1	1	3	8
Régie des marchés agricoles et alimentaires du Québec	2	-	-	3	5
Régie des rentes du Québec	155	33	200	44	432
Régie du bâtiment du Québec	16	5	9	6	36
Régie du logement	33	3	86	2	124
Corporations					
Société d'habitation du Québec	13	6	30	10	59
Société du financement agricole	4	-	2	2	8
Société de l'assurance automobile du Québec	327	110	425	88	950
Tribunals					
Tribunal administratif du Québec	11	1	61	3	76
Tribunal des professions	1	-	-	-	1
Tribunal du travail	1	-	2	-	3
Other[3]	1	2	1	2	6
Total	**5,308**	**2,207**	**7,615**	**1,604**	**16,734**

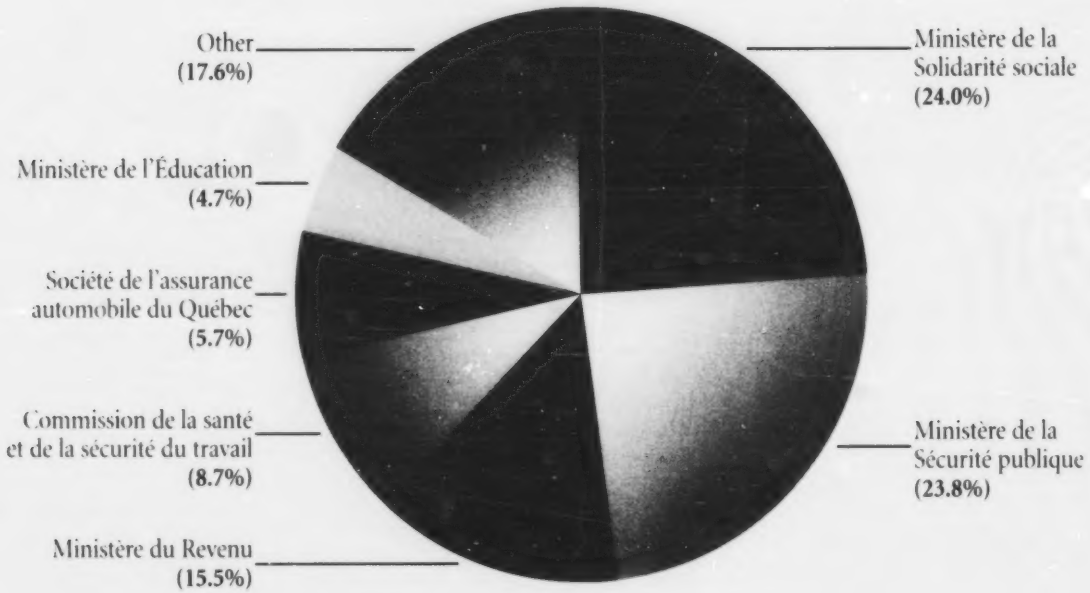
1. Including complaints and consultation under way before and during the 1999-2000 year, they were completed during the year or they were still under investigation on March 31, 2000.
2. Consultations,complaints referred, complaints refused, investigations interrupted, and complaints withdrawn by the citizen in question.
3. Complaints and consultations that cannot be linked to any department or agency.

Figure 2
Main departments and agencies targeted by consultations and complaints in 1999-2000

6.6.7

FIGURE 2

MAIN DEPARTMENTS AND AGENCIES TARGETED BY CONSULTATIONS AND COMPLAINTS IN 1999-2000



6.6.8

TABLE 6

CAUSES OF SUBSTANTIATED COMPLAINTS

	1998-1999		1999-2000	
	No	%	No	%
Abuse of power	9	--	12	1
Unreasonable or unfair actions	311	14	289	13
Actions not in compliance with laws, regulations or guidel	239	11	265	12
Reprehensible behaviour or attitude	44	2	43	2
Unreasonable delays	616	28	574	26
Factual errors	126	6	112	5
Services not available	193	9	253	11
Inconsistencies	47	2	67	3
Inadequate information	114	5	96	4
Negligence or inaction	178	8	193	9
Other	336	15	303	14
Total	**2,213**		**2,207**	

6.6.9

TABLE 7

SUBSTANTIATED COMPLAINTS IN 1999-2000[1]

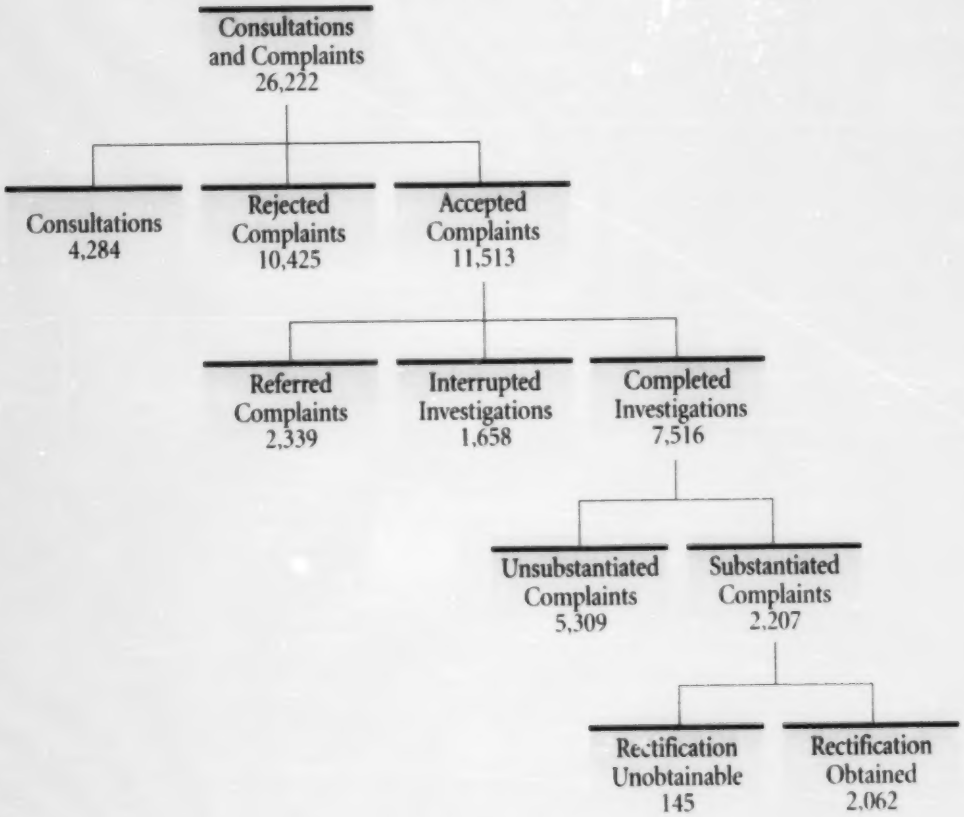
	Investigations	Substantiated complaints	Rate of substantiated complaints
	No	No	%
Ministère du Revenu	1,410	695	49
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	27	12	44
Ministère de la Famille et de l'Enfance	21	9	43
Commission de la santé et de la sécurité du travail	368	157	43
Ministère de l'Environnement	34	14	41
Ministère de la Sécurité publique	1,970	658	33
Le Curateur public	180	55	31
Commission québécoise des libérations conditionnelles	46	12	26
Ministère de l'Éducation	355	91	26
Commission administrative des régimes de retraite et d'assurances	43	11	26
Société de l'assurance automobile du Québec	437	110	25
Ministère des Transports	25	6	24
Régie du bâtiment du Québec	21	5	24
Ministère de la Justice	94	21	22
Régie des rentes du Québec	188	33	18
Régie de l'assurance maladie du Québec	179	30	17
Commission des normes du travail	47	6	13
Ministère de la Solidarité sociale	1,818	227	12
Régie du logement	36	3	8

1. Departments and agencies which were targets of at least 20 complaints.

6.6.10

FIGURE 3

PROCESSING OF COMPLAINTS AND CONSULTATIONS IN 1999-2000[1]



1. Including consultations and complaints received prior to April 1, 1999, and excluding consultations and complaints not completed by April 1, 2000.

7

APPENDICES

APPENDIX I

THE QUÉBEC OMBUDSMAN'S SOCIAL CONTRACT

1. ENSURING GOVERNMENT TRANSPARENCY

1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.

1.2 Give citizens all the information they need in a timely manner.

1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.

1.6 Consult the client group concerned when government programs are developed and implemented, as well as when changes are made to these programs.

1.7 Get the opinion of people who are representatives of the client group when preparing forms and information folders, and use simple, everyday language in the wording of these documents.

2. PROMOTING ACCESS TO GOVERNMENT SERVICES

2.1 Implement reception and information services promoting a personalized and respectful approach to dealing with individuals, and one that also takes into account the limitations of older or handicapped client groups, as well as linguistic barriers.

2.2 Plan telephone services in such a way as to be able to meet demand as efficiently as possible, so that citizens are not faced with overloaded telephone lines.

2.3 Only use interactive voice response systems when these can better serve clients and provide more complete information.

2.4 Ensure that office setup respects the public's right to privacy in facilities where public services are delivered.

2.5 Ensure that office setup is not a barrier to government services for people with physical disabilities.

2.6 In determining office hours, make allowance for new social and family realities.

2.7 Seek to provide one-stop service and, as needed, consider amalgamating administrative divisions if this can contribute to improving client accessibility and service quality. On the other hand, do not at all costs maintain an operation or unit of questionable relevance.

3. *Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable*

3.1 Abide by special statutes and regulations as well as regular legislation.

3.2 Promote respect for basic rights and freedoms in each action that is taken.

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.

3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

4. *Respecting the Rules of Natural Justice*

4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

4.5 Avoid all forms of discrimination or unequal treatment.

5. *Serving Citizens*

5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

6. *Understanging Citizens and Making Their Lives Easier*

6.1 Survey client group in order to establish who uses the service and what their needs and expectations are.

6.2 Create user committees.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

6.4 Set up advisory committees made up of employees who are in direct contact with users.

6.5 Eliminate unnecessary procedures and formalities as well as all unnecessary paperwork.

7. *Respecting Personal Dignity*

7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

7.2 Make relations with citizens as human and personal as possible.

7.3 Avoid treating citizens who claim a service or benefit as if they were seeking privileges and not rights.

7.4 Do unto others as you would have them do unto you.

7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.

7.6 When it is necessary to develop systems for the detection and prevention of fraud, ensure that the rights of citizens are respected and systematically discard any detection methods that are ineffectual or unnecessarily intrusive.

7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

7.8 Take into consideration the aspirations, characteristics and conditions of native peoples and cultural communities.

8. *Doing the Utmost to Act Responsibly*

8.1 Provide an opportunity for decisions to be reviewed or appealed.

8.2 Establish a complaints-handling office as independent as possible from the decision-maker whose decisions are being examined.

8.3 Establish, as needed, conciliation or mediation mechanisms.

8.4 Keep promises made to citizens.

8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.

8.6 Provide services and information, and convey decisions, within a reasonable length of time.

8.7 Continuously seek to shorten waiting times.

8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

8.9 Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings..

8.10 Draw up a detailed code of ethics that is practical and not limited to generalities and wishful thinking; make clients aware of the code.

8.11 Never consider a client's dissatisfaction as mere criticism, but rather as useful feedback that will make improvement possible.

8.12 Make clients feel important, and recognize work that has been well done by employees.

8.13 Bring decision-making as close as possible to clients.

APPENDIX II

LIST OF GOVERNMENT DEPARTMENTS AND ORGANIZATIONS UNDER THE JURISDICTION OF THE QUÉBEC OMBUDSMAN

Agence de l'efficacité énergétique

Assemblée nationale (*National Assembly*)

Bibliothèque nationale du Québec

Bureau d'audiences publiques sur l'environnement

Bureau de la protection civile

Comité catholique du conseil supérieur de l'éducation (*Catholic Committee of the Conseil supérieur de l'éducation*)

Comité de déontologie policière

Comité de la santé mentale du Québec

Comité de révision sur la langue d'enseignement

Comité de revue de l'utilisation des médicaments en milieu ambulatoire

Comité protestant du conseil supérieur de l'éducation (*Protestant Committee of the Conseil supérieur de l'éducation*)

Commissaire à la déontologie policière (*Police Ethics Commissioner*)

Commissaire aux plaintes en matière de santé et de services sociaux (*Health and Social Sservices Complaints Commissioner*)

Commissaire de l'industrie de la construction (*Building Commissioner*)

Commission administrative des régimes de retraite et d'assurances

Commission consultative de l'enseignement privé

Commission d'accès à l'information

Commission d'appel pour les autochtones du Québec

Commission de la fonction publique

Commission de la qualité de l'environnement Kativik

Commission de la santé et de la sécurité du travail
Commission de l'équité salariale
Commission de protection de la langue française
Commission de protection du territoire agricole du Québec
Commission de toponymie
Commission des lésions professionnelles
Commission des normes du travail
Commission des transports du Québec
Commission d'évaluation de l'enseignement collégial
Commission municipale du Québec
Commission québécoise des libérations conditionnelles
Commission québécoise d'examen
Conseil consultatif de la lecture et du livre
Conseil consultatif de la pharmacologie
Conseil consultatif du travail et de la main-d'oeuvre
Conseil de la famille et de l'enfance
Conseil de la justice administrative
Conseil de la langue française
Conseil de la magistrature
Conseil de la santé et du bien-être
Conseil de la science et de la technologie
Conseil de l'Ordre national du Québec
Conseil des aînés
Conseil des relations interculturelles
Conseil d'évaluation des technologies de la santé
Conseil du statut de la femme
Conseil du trésor (le personnel seulement)
Conseil médical du Québec
Conseil permanent de la jeunesse
Conseil supérieur de l'éducation

Coroner *(Coroner)*
Corporation d'hébergement du Québec
Cour du Québec *(Court of Québec)*
Curateur public *(Public Curator)*
Éditeur officiel du Québec *(Québec Official Publisher)*
Emploi-Québec
Fonds d'aide à l'action communautaire autonome
Fonds d'aide aux recours collectifs
Fonds d'assurance-prêts agricoles et forestiers
Fonds de développement du marché du travail
Fonds de développement régional
Fonds de lutte contre la pauvreté par la réinsertion au travail
Inspecteur général des institutions financières du Québec
Institut de la statistique du Québec
Institut de tourisme et d'hôtellerie du Québec
Ministère de la Culture et des Communications
Ministère de la Famille et de l'Enfance
Ministère de la Justice
Ministère de la Santé et des Services sociaux
Ministère de la Sécurité publique
Ministère de la Solidarité sociale
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation
Ministère de l'Éducation
Ministère de l'Environnement
Ministère de l'Industrie et du Commerce
Ministère des Affaires municipales et de la Métropole
Ministère des Finances
Ministère des Régions
Ministère des Relations avec les citoyens et de l'Immigration
Ministère des Relations internationales

Ministère des Ressources naturelles

Ministère des Transports

Ministère du Conseil exécutif

Ministère du Revenu

Ministère du Travail

Ministre délégué à la Famille et à l'Enfance *(Minister for Child and family Welfare)*

Ministre délégué à la Santé, aux Services sociaux et à la Protection de la jeunesse *(Minister for Health, Social Services and Youth Protection)*

Ministre délégué à l'Administration et à la Fonction publique *(Minister for Administration and the Public Service)*

Ministre délégué à l'Autoroute de l'information et aux Services gouvernementaux *(Minister for the Information Highway and Government Services)*

Ministre délégué à l'Industrie et au Commerce *(Minister for Industry and trade)*

Ministre délégué au Tourisme *(Minister for Tourism)*

Ministre délégué aux Affaires autochtones *(Minister for Native Affairs)*

Ministre délégué aux Affaires intergouvernementales canadiennes *(Minister for canadian Intergovernmental Affairs)*

Ministre délégué aux Transports *(Minister for transport)*

Ministre d'État à l'Économie et aux Finances *(Minister of State for the Economy and Finance)*

Office de la langue française

Office de la protection du consommateur

Office des personnes handicapées du Québec

Office des professions du Québec

Placements Québec

Régie de l'assurance-dépôts du Québec

Régie de l'assurance maladie du Québec

Régie des alcools, des courses et des jeux

Régie des assurances agricoles du Québec

Régie des marchés agricoles et alimentaires du Québec

Régie des rentes du Québec

Régie du bâtiment du Québec

Régie du cinéma

Régie du logement

Secrétariat à la condition féminine

Secrétariat à la politique linguistique
Secrétariat à la réforme électorale
Secrétariat à l'action communautaire autonome
Secrétariat de l'autoroute de l'information
Société de financement agricole
Société de la faune et des parcs du Québec
Société de l'assurance automobile du Québec
Société d'habitation du Québec
Sûreté du Québec
Tourisme Québec
Tribunal administratif du Québec *(Administrative Tribunal of Québec)*
Tribunal des droits de la personne *(Human Rights Tribunal)*
Tribunal des professions *(Professions Tribunal)*
Tribunal du travail *(Labour Court)*
Vérificateur général *(Auditor General)*

APPENDIX III

BILLS AND DRAFT REGULATIONS

DURING THE 1999–2000 FISCAL YEAR:

EIGHTEEN DRAFT REGULATIONS WERE ANALYZED.

THE QUÉBEC OMBUDSMAN'S COMMENTS WERE ADDRESSED TO THE OFFICER RESPONSIBLE CONCERNING TWELVE OF THESE DRAFT REGULATIONS:

1. *Regulation respecting income support;*
2. *Rules of evidence, procedure and practice;*
3. *Regulation to amend the Regulation respecting houses of detention;*
4. *Regulation to amend the Regulation respecting financial assistance for education expenses - An Act respecting financial assistance for education expenses;*
5. *Regulation to amend the Regulation respecting the definition of resident in Québec - Education Act;*
6. *Regulation to amend the Regulation respecting the definition of resident in Québec - General and Vocational Colleges Act;*
7. *Regulation to amend the Regulation respecting the definition of resident in Québec - An Act respecting private education;*
8. *Regulation respecting compensation under Chapter II of Title IV of the Automobile Insurance Act - Automobile Insurance Act;*
9. *Regulation to amend the Regulation defining certain words and expressions for the purposes of the Automobile Insurance Act;*
10. *Regulation respecting lump-sum compensation for non-pecuniary damage;*
11. *Regulation respecting the payment of income compensation entitlement in a single amount;*
12. *Regulation to amend the Regulation respecting the reimbursement of certain expenses.*

TWO DRAFT BILLS AND 41 BILLS WERE ANALYZED.

A BRIEF WAS PRESENTED TO THE PARLIAMENTARY COMMITTEE CONCERNING:

1. *An Act to amend the Act respecting prescription drug insurance and the Act respecting the Régie de l'assurance maladie.*

THE QUÉBEC OMBUDSMAN'S COMMENTS WERE ADDRESSED TO THE MINISTER RESPONSIBLE FOR THE DRAFT LEGISLATION IN THE FOLLOWING ELEVEN CASES:

1. *An Act to amend the Taxation Act and other legislative provisions;*
2. *An Act to amend the Act respecting Automobile Insurance Act and other legislative provisions;*
3. *Midwives Act;*
4. *An Act to amend various legislative provisions concerning de facto spouses;*
5. *An Act to amend certain legislative provisions respecting the Public Curator;*
6. *An Act to amend the Act respecting labour standards and other legislative provisions concerning work performed by children;*
7. *An Act to amend the Highway Safety Code and other legislative provisions;*
8. *An Act to amend the Professional Code and other legislative provisions;*
9. *Financial Administration Act;*
10. *Public Administration Act;*
11. *An Act to amend the Act respecting the ministère du Revenu with regard to the recovery of an amount under a fiscal law;*
12. *An Act to provide for balanced budgets in the public health and social services network.*

SINCE THE BEGINNING OF THE 2000–2001 FISCAL YEAR:

13 DRAFT REGULATIONS WERE ANALYZED.

THE QUÉBEC OMBUDSMAN ADDRESSED NO COMMENTS TO THE OFFICER RESPONSIBLE FOR THESE DRAFT REGULATIONS.

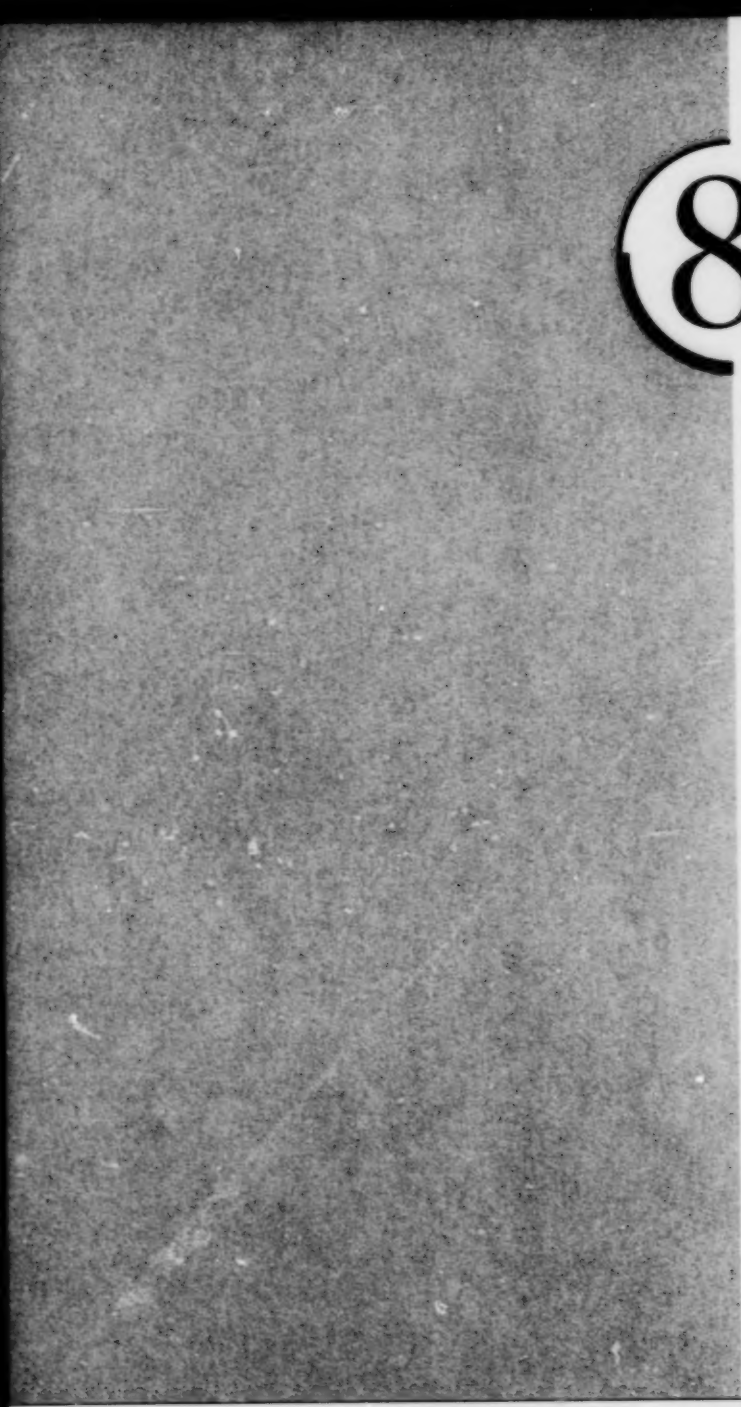
ONE DRAFT BILL AND 19 BILLS WERE ANALYZED.

TWO BRIEFS WERE PRESENTED TO THE PARLIAMENTARY COMMITTEE CONCERNING:

1. *An Act respecting the legal normalization of new information technologies;*
2. *An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector, the Professional Code and other legislative provisions.*

THE QUÉBEC OMBUDSMAN'S COMMENTS WERE ADDRESSED TO THE MINISTER RESPONSIBLE FOR THE FOLLOWING DRAFT LEGISLATION:

1. *An Act to establish a national identification card.*



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